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August 17, 2012

VIA FEDEX

Scott Hansen
EPA Project Coordinator
US Environmental Protection Agency
Region 5
77 W. Jackson Blvd. (SR-6J)
Chicago, IL 60604-3590

Re: Case No. 12-cv-00565

Dear Mr. Hansen:

Pursuant to Paragraph 112 of the consent decree lodged in Case No. 12-cv-00565, *United States of America and the State of Wisconsin v. Northern States Power Company*, Western District of Wisconsin, please find enclosed a Complaint filed by Northern States Power Company.

Very truly yours,

Margrethe Kearney

Enclosure

cc: Arthur Foerster
Kristen Shults Carney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NORTHERN STATES POWER COMPANY,
a Wisconsin corporation,

Plaintiff,

v.

THE CITY OF ASHLAND, WISCONSIN;
SOO LINE RAILROAD COMPANY;
and WISCONSIN CENTRAL, LTD.,

Defendants.

Case No. 12-cv-602

COMPLAINT

Plaintiff Northern States Power Company, a Wisconsin corporation ("NSPW"), by its undersigned counsel, hereby alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to federal and state law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.* ("CERCLA" also known as "Superfund"), relating to an environmental cleanup proceeding in Ashland, Wisconsin.

2. The environmental cleanup addresses contamination at the Ashland/Northern States Power Lakefront Site, located along the shore of Chequamegon Bay, Lake Superior, in Ashland, Ashland County, Wisconsin. The Ashland/Northern States Power Lakefront Site is bordered by U.S. Highway 2 to the south, Prentice Avenue to the east, Ellis Avenue to the west, and Lake Superior's Chequamegon Bay to the north ("Ashland Site"). The Ashland Site consists

of approximately 40 acres and has been divided by the United States Environmental Protection Agency ("EPA") into four areas of concern: (a) Chequamegon Bay; (b) soils and shallow groundwater in Kreher Park; (c) soils and shallow groundwater in the Upper Bluff/Filled Ravine; and (d) deep groundwater in the Copper Falls Aquifer underlying the Upper Bluff. *See* Illustrative Site Map (Ex. 1 hereto). This action involves NSPW's claims for past and future response costs incurred in connection with the Chequamegon Bay and Kreher Park areas (referred to herein as the "Ashland Facility") and natural resource damages associated with the Ashland Site. NSPW does not seek the recovery of response costs or damages in this action for the cleanup of the Upper Bluff/Filled Ravine or the deep groundwater in the Copper Falls Aquifer underlying the Upper Bluff at this time.

3. NSPW, a Wisconsin public utility, is a current owner of a small portion of property within the Ashland Site on which, from 1885 to 1947, a manufactured gas plant ("MGP") that provided gas to the Ashland community was located. The MGP was located within the area known as the Upper Bluff/Filled Ravine area of the Ashland Site. NSPW never owned nor operated the MGP itself, but acquired the property on which the MGP was located in 1986 from a former public utility, Lake Superior District Power Company. Lake Superior District Power Company had owned the MGP since approximately 1922, when it purchased the plant from Ashland Light Power & Street Railway Company, who itself had acquired the MGP from earlier owners. The MGP ceased operations in 1947, decades before NSPW acquired the property. Since NSPW acquired the MGP property, it has utilized the former MGP property as an equipment, repair and storage facility.

4. Commercial, municipal and industrial activities have been conducted at and adjacent to the Ashland Site from at least the late 1800s. Based on investigations conducted

from 1991 to the present, the EPA and the Wisconsin Department of Natural Resources ("WDNR") (collectively, the "Agencies") have determined that the Ashland Site is contaminated by, *inter alia*, polycyclic aromatic hydrocarbons ("PAHs") and volatile organic compounds ("VOCs"), including without limitation, concentrations of PAHs in the form of tars and oils, commonly referred to as nonaqueous phase liquids ("NAPL"), as well as metals and pesticides and their components (collectively, "Contaminants of Concern" or the "COCs").

5. Under the Agencies' oversight, NSPW has undertaken extensive investigatory, remedial, and other activities at the entire Ashland Site (not just the portion NSPW currently owns) consistent with the National Contingency Plan, including without limitation, the performance of a Remedial Investigation and Feasibility Study ("RI/FS"), soil, groundwater and sediment sampling, ecological and human health risk assessments, environmental forensic investigations, site characterizations, historic potentially responsible party ("PRP") investigations, and interim removal actions.

6. NSPW entered into an Administrative Order on Consent ("AOC") with EPA on November 16, 2003, to perform the RI/FS under EPA's oversight. *See* CERCLA Docket No. V-W-04-C-764 (Nov. 16, 2003) (Ex. 2 hereto). The objectives of the RI/FS were to determine the nature and extent of contamination and any threat to human health at the Ashland Site, to determine and evaluate alternatives for remedial action at the site, and to collect data for developing and evaluating remedial alternatives. NSPW completed the RI/FS in 2008, and EPA issued a notice of completion for the AOC in 2010.

7. EPA's decision on the remedial action to be implemented at the Ashland Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2010, on which the State of Wisconsin gave its concurrence.

8. NSPW has entered into a Consent Decree with the United States and the State of Wisconsin lodged with this Court on August 8, 2012. *See* Case No. 12-cv-00565, Complaint (Dkt. No. 1) and Consent Decree Between the United States, Wisconsin, Northern States Power Company, and the Bad River and Red Cliff Bands of the Lake Superior Tribe of Chippewa Indians (Dkt. No. 2) ("2012 Consent Decree") (Exs. 3 and 4 hereto, attachments omitted). The remedial design and remedial action to be conducted by NSPW pursuant to the 2012 Consent Decree pertains only to the selected remedy specified in the ROD for the on-land portions of the Site (Kreher Park; Upper Bluff/Filled Ravine; and the deep groundwater in the Copper Falls Aquifer), referred to as the "Phase 1 Project Area," and not to the sediments in Chequamegon Bay. The cost of the cleanup for the Phase 1 Project Area is estimated at $40 million.

9. Under the 2012 Consent Decree, NSPW also must reimburse the United States for certain future response costs incurred by EPA.

10. Under the 2012 Consent Decree, NSPW also must make substantial payment (in the form of a land conveyance of nearly 1,400 acres) to federal, state and tribal natural resource trustees to resolve all alleged injury to, destruction of, or loss of use or impairment of natural resources associated with the Ashland Site. The Department of Interior (as represented by the U.S. Fish and Wildlife Service) and the Department of Commerce (as represented by the National Oceanic and Atmospheric Administration) have asserted that they are federal trustees for natural resources at or near the Ashland Site. WDNR has asserted that it is a state trustee for natural resources at or near the Ashland Site. The Bad River and Red Cliff Bands of the Lake Superior Tribe of Chippewa Indians (the "Tribes") have asserted that they are trustees for natural resources at or near the Ashland Site. The U.S. Fish and Wildlife Service, the National Oceanic Atmospheric Administration, WDNR, and the Tribes (collectively, "Trustees") participated in

the negotiation of the 2012 Consent Decree with respect to natural resource damages and support the 2012 Consent Decree.

11. Per the requirements of 42 U.S.C. § 9622(d)(2), the 2012 Consent Decree has been submitted for public comment. *See* 77 Fed. Reg. 48,541 (Aug. 14, 2012).

12. NSPW will continue to incur response costs as the investigation and cleanup proceeds in the Phase 1 Project Area pursuant to the 2012 Consent Decree, and NSPW may incur response costs in connection with Chequamegon Bay. The investigation and cleanup for both portions of the Ashland Facility are not complete, and substantial work remains to be done.

13. NSPW's cooperative actions to date and obligations pursuant to the 2012 Consent Decree have and will impact the utility's ratebase customers.

14. Although the Agencies have identified other responsible parties who are liable as a result of those parties' operations at and/or ownership of the Ashland Facility, including Defendants the City of Ashland ("City"), the Soo Line Railroad Company (d/b/a Canadian Pacific Railway) ("Soo Line") and Wisconsin Central Ltd. ("Wisconsin Central"), only NSPW has cooperated with the Agencies in taking any significant action to perform work or fund investigation or cleanup efforts at the Ashland Facility.

15. Other responsible parties, such as the John Schroeder Lumber Company who operated at the Ashland Site from approximately 1901 through 1939 ("Schroeder Lumber"), appear to no longer exist or are otherwise defunct and, therefore, represent an "orphan share" at the Ashland Facility.

16. As a result, NSPW (and/or its ratebase customers) have inequitably borne the full burden for addressing the investigation and cleanup of the Ashland Facility to date. NSPW has

incurred well in excess of its fair equitable share of the Ashland Facility's response costs and natural resource damages for the Ashland Site.

17. NSPW brings this lawsuit to: (1) establish the liability of Defendants under federal and state law for the contamination of the Ashland Facility; (2) determine Defendants' equitable shares of the costs of investigating and cleaning up the Ashland Facility, and of the compensation paid to the Trustees for alleged natural resource damages and assessment costs related to the Ashland Site; and (3) require Defendants to pay their fair portion of those costs.

JURISDICTION

18. This Court has jurisdiction over the subject matter of this Complaint pursuant to 42 U.S.C. § 9601 *et seq.* and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over NSPW's state law claims pursuant to 28 U.S.C. § 1367.

19. Venue is proper under 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b) because: (a) the events giving rise to the claims asserted herein are based on operations and activities that took place in this District; (b) the Ashland Facility is located entirely within this District; and (c) each of the Defendants is located and/or does or has done business in the District.

20. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because each Defendant is subject to personal jurisdiction in this District.

PARTIES

21. Plaintiff NSPW is a corporation organized and existing under the laws of Wisconsin. NSPW is an operating utility primarily engaged in the generation, transmission, distribution and sale of electricity in portions of northwestern Wisconsin and in the western portion of the Upper Peninsula of Michigan. NSPW provides electric utility service to approximately 251,000 customers and natural gas utility service to approximately 107,000

customers. In the State of Wisconsin, NSPW is regulated by the Public Service Commission of Wisconsin.

22. Defendant THE CITY OF ASHLAND is a Wisconsin municipal corporation organized under the laws of the State of Wisconsin, with its principal place of business located in Ashland, Wisconsin. The City received a Special Notice of Liability Letter from the EPA, dated April 27, 2011, notifying the City of its responsibility for the Ashland Site under CERCLA § 107(a), 42 U.S.C. § 9607(a). The City has owned a large portion of Kreher Park since at least 1942—including various facilities from which releases or disposal of hazardous substances have occurred. The City also has operated in and/or around the Kreher Park portion of the Ashland Site since at least the late 1800s. The City's activities have resulted in the release and/or disposal of hazardous substances at the Ashland Facility.

23. Defendant SOO LINE RAILROAD COMPANY is a Minnesota corporation, doing business in the State of Wisconsin, with its principal place of business in Minneapolis, Minnesota. Upon information and belief, Soo Line is the successor to, among other entities, the Minneapolis, St. Paul and Sault Ste. Marie Railway, the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company, the Wisconsin Central Railway Company, the Wisconsin Central Railroad Company, and the Duluth, South Shore & Atlantic Railroad. Soo Line received a Special Notice of Liability Letter from the EPA, dated April 27, 2011, notifying Soo Line of its responsibility for the Ashland Site under CERCLA § 107(a), 42 U.S.C. § 9607(a). Soo Line and/or its predecessors, owned and/or operated a railroad corridor through the Kreher Park area of the Ashland Site, and other related facilities, from at least the 1870s through 1987, which ownership and operation resulted in the release and/or disposal of hazardous substances at the Ashland Facility.

24. Defendant WISCONSIN CENTRAL LTD. is an Illinois corporation, doing business in the State of Wisconsin, with its principal place of business in Homewood, Illinois. Wisconsin Central received a Special Notice of Liability Letter from the EPA, dated April 27, 2011, notifying Wisconsin Central of its responsibility for the Ashland Site under CERCLA § 107(a), 42 U.S.C. § 9607(a). Wisconsin Central acquired the existing railroad corridor through the Kreher Park area of the Ashland Site, and other related facilities, in 1987 from the Soo Line. Wisconsin Central is a subsidiary of Canadian National Railway.

FACTUAL BACKGROUND

A. The Ashland Site

25. EPA placed the Ashland Site on the National Priorities List in September 2002.

26. The Ashland Site consists of property and other facilities currently owned by the City, Wisconsin Central and NSPW, among others. NSPW's property is on the Upper Bluff/Filled Ravine portion of the Ashland Site. The City and Wisconsin Central own portions of, and other facilities within, Kreher Park.

27. The Kreher Park portion of the Ashland Site consists of approximately 13 acres of man-made, reclaimed ("landfilled") former lakebed. Kreher Park currently consists of a swimming beach, a boat landing, an RV park and adjoining open space east of Prentice Avenue and to the east of the Ashland Site. For purposes of this Complaint, and to be consistent with other Ashland Site documents, the portion of the Ashland Site to the west of Prentice Avenue, east of Ellis Avenue and north of the NSPW property is referred to as "Kreher Park." See Ex. 1. Kreher Park has been used for multiple industrial activities since the late 1800s, including but not limited to the following, all of which, upon information and belief, involved COCs: (a) lumbering, sawmill and wood treating activities; (b) railroad operations including the loading and off-loading of materials; (c) unregulated dumps; (d) sewers; (e) a former ponded area of

wood treatment residuals; (f) a municipal wastewater treatment plant; (g) construction, demolition and filling activities; (h) waste disposal, treatment and transfer; and (i) discharges from municipal sewer systems.

28. From approximately 1901 through 1939, Schroeder Lumber owned and operated a large portion of Kreher Park. The County of Ashland acquired ownership of the former Schroeder property after the demise of Schroeder Lumber. The City purchased the Schroeder property from the County in 1942 and has since exercised dominion and control over the former Schroeder property as well as additional portions of Kreher Park. As alleged below, numerous construction activities and other operations by the City and others have resulted in the disposal, re-disposal and mobilization of COCs and the release of COCs at, from, and/or to Kreher Park and Chequamegon Bay.

29. The Chequamegon Bay portion of the Ashland Site consists of approximately 16 acres directly off-shore from Kreher Park that the Agencies have determined is impacted by COCs. In addition to releases from Kreher Park, NSPW is informed and believes that Chequamegon Bay was historically used for commercial shipping, including wood and iron ore. Chequamegon Bay also contains wood waste and other debris from, *inter alia*, the former Schroeder property and the demolition and fill activities conducted by the City and others.

30. The City informed WDNR about potential contamination of Kreher Park in 1989. In 1991, WDNR completed an initial assessment of the Ashland Site and determined that further environmental investigation should occur.

31. In 1994, WDNR initiated a more comprehensive investigation and evaluation of the area. WDNR named NSPW as a PRP in 1995 for waste purportedly from the former MGP. WDNR notified the City and Wisconsin Central of their responsibility in 1997.

32. Beginning in 1995, NSPW performed and/or funded a series of investigations to, *inter alia*, characterize the purported subsurface contamination and affected sediments at the Ashland Site and identify PRPs for the Ashland Site. NSPW initially performed its investigations on the Upper Bluff/Filled Ravine portions of the Ashland Site, and WDNR investigated Kreher Park and the sediments. Costs that WDNR incurred as part of its investigations at Kreher Park and the sediments were resolved in the case captioned *Wisconsin v. NSP*, Ashland County Circuit Court, Case No. 04-CV-118. NSPW also performed two interim removal actions at the Ashland Site: (a) installing a contaminant-recovery system to pump and treat contaminants from the Copper Falls Aquifer; and (b) excavating contaminated soil and installing a low permeability cap and a groundwater extraction well.

33. NSPW subsequently signed an AOC with EPA on November 16, 2003, to perform the aforementioned RI/FS at the Ashland Site. (Ex 2 hereto). NSPW completed the RI/FS in 2008, and EPA issued a notice of completion for the AOC in 2010.

34. In September 2010, EPA issued its ROD setting forth EPA's selected remedy for the Ashland Site. On April 27, 2011, EPA issued Special Notice of Liability Letters to the City, Soo Line, Wisconsin Central and NSPW, informing those parties of their alleged liability and seeking the negotiation of a consent decree to implement the remedy selected in the ROD. Good faith settlement offers from the parties were universally rejected by EPA, and, on information and belief, NSPW was the only party to return to the negotiating table with an enhanced settlement offer in negotiating the 2012 Consent Decree.

35. NSPW has been in close cooperation with EPA and WDNR throughout the investigation of the Ashland Site and the CERCLA administrative process, including taking the leading role on site investigations, preparing technical work plans, remediation plans and design

reports, implementing interim actions and providing project management and technical support. NSPW is the only potentially responsible party to undertake such efforts.

36. NSPW negotiated in good faith with the Agencies, and pursuant to the 2012 Consent Decree filed under CERCLA §§ 106 and 107 (Ex. 4 hereto), NSPW is required to (i) perform the work to clean up the Upper Bluff/Filled Ravine, Kreher Park and Copper Falls portions of the Ashland Site, (ii) reimburse the United States for certain future costs (including interest), and (iii) fully compensate the natural resource Trustees for natural resource damages and assessment costs for the entire Ashland Site. NSPW continues to negotiate in good faith with the Agencies about the potential remediation of Chequamegon Bay.

B. The John Schroeder Lumber Company (Orphan Share)

37. In the early 1900s, approximately a dozen lumber mills lined the Ashland lakefront. Schroeder Lumber was a corporation organized under the laws of Wisconsin in 1881 and was headquartered in Milwaukee, Wisconsin.

38. In 1901, Schroeder Lumber purchased an existing lumber mill on the site referred to herein as Kreher Park. Schroeder Lumber expanded the facility's lumber and wood processing operations and shipping facilities on the lakefront. Upon information and belief, in Ashland, Schroeder Lumber operated one of the largest and best equipped mills in the country at the time. Schroeder maintained a vertically integrated business structure, cutting timber, railroading and shipping, and processing and milling lumber into finished commercial and consumer products, which it marketed. The company operated a number of affiliates, including Schroeder Mills & Timber Co., Schroeder Timber Products Co., Schroeder Land & Timber Co., Northern Pacific Logging Co., J-S Refrigeration Division, Schroeder Manatee Company, and the toy-making Playskool Institute.

39. During the height of its operations in Ashland, Schroeder Lumber operated 24 hours per day during the summer season, employed anywhere between 50 and more than 350 men, and produced upwards of 75 million board feet annually. In the Kreher Park portion of the Ashland Site, Schroeder Lumber operated, *inter alia*, a saw mill, planing mill, machine shop, electric light plant, lath mill, wood treatment facility, oil houses, a kiln, a refuse burner, pulpwood hoist, and dock piling operation. Schroeder Lumber's finished products included railroad ties, poles, dock pilings, rough and finished lumber, lath, shingles, flooring, and other commercial and consumer wood products. NSPW is informed and believes that the Ashland location was Schroeder's only wood processing facility.

40. Schroeder Lumber used a variety of COC-containing substances at the Ashland Facility in its operations and as wood preservers as part of the company's wood preservation and treatment operations, including, but not limited to petroleum, diesel, oils, and creosote. In 1991, the State of Wisconsin reported documented dumping of creosote-treated wood preservatives at the Schroeder operations.

41. The primary industrial process that Schroeder Lumber employed to treat wood at the Ashland Site was an open-tank, dip-treatment operation. The preservation process involved Schroeder Lumber employees dipping railroad ties and other wood materials into large, wooden, above-ground, tank-like structure(s) filled with creosote or other wood preserving substances containing COCs.

42. During this treatment process, spills from the tank were reportedly ubiquitous. Once dipped, Schroeder Lumber employees would remove the wood from the tank, scrape off excess wood treatment compounds and allow the wood to drip dry in stacked piles on the ground in the vicinity of the dip treating tank.

43. NSPW is informed and believes that Schroeder Lumber's lumber and wood processing operations continued at the Ashland Facility at least through 1939.

44. NSPW is informed and believes that, as a result of Schroeder Lumber's operations, Schroeder Lumber released and/or disposed of COCs that have caused, contributed to and/or exacerbated the contamination of Chequamegon Bay and Kreher Park. Schroeder Lumber also generated a significant amount of wood waste and wood processing residuals that are still present at the Ashland Facility.

45. Because Schroeder Lumber no longer exists, and no successor has yet been identified, its liability for the Ashland Facility is considered to be an "orphan share." However, the City subsequently owned and exercised dominion and control over the former Schroeder property, taking actions that resulted in the significant contribution to and/or exacerbation of contamination at the Ashland Facility, including mobilization of COCs in Kreher Park and Chequamegon Bay.

C. The City of Ashland

46. In 1942, the City purchased the former Schroeder Lumber property and its facilities (now part of the portion of the Ashland Site known as Kreher Park) from the County of Ashland. By the time the City purchased the Schroeder Lumber property, site structures had been razed, fixtures removed, and foundations dynamited. NSPW is informed and believes that the wood treatment dipping structures had also been demolished and the COC-containing substances were left on site and permitted to sink into, run off and pool on the ground, creating the former "pond" of wood treatment residuals, which is sometimes referred to as the misnamed "coal tar dump" or "waste tar dump." The City began a land assembly along the lakefront and later acquired additional parcels in western Kreher Park from the Soo Line in 1986.

47. NSPW is informed and believes that the City's industrial and municipal activities at and near the Ashland Facility, both before and after the City's purchase of the Schroeder property, caused, contributed to, and/or exacerbated the COC contamination of the Ashland Facility, including the mobilization of COCs in Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

48. Despite the City's own statements to EPA admitting the City is a liable party under CERCLA, the City has refused to perform any work or fund any investigation or cleanup of the Ashland Site. Indeed, despite months of NSPW's attempts to negotiate reasonable terms of access to allow NSPW and its contractors on the City property in Kreher Park to perform the cleanup work required by the 2012 Consent Decree, the City has refused and continues to refuse to grant NSPW access.

49. Upon information and belief, the City's activities on the former Schroeder property also resulted in a significant amount of wood waste and debris and wood processing residuals disposed of in Chequamegon Bay. Upon information and belief, the City disposed of this material with the intent to arrange for the disposal of hazardous substances.

1. The City's Uncontrolled Waste Disposal Landfill Operations

50. During the 1800s and early 1900s, the City regularly disposed of, and permitted/authorized the disposal of, wastes directly into Chequamegon Bay and into ravines transecting the lakefront area in the vicinity of the Ashland Site.

51. Among other activities, the City reclaimed the lakebed in the Kreher Park portion of the Ashland Site by directly transporting and dumping (and permitting others to transport and dump) into Chequamegon Bay solid, municipal, construction and demolition, and industrial waste materials. The City has admitted to dumping activities in Kreher Park.

52. Upon information and belief, the City's unregulated waste disposal practices resulted in the discharge of COCs to the Ashland Facility, and caused, contributed significantly to, and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

2. The City's Uncontrolled Sewage And Wastewater Discharges

53. Prior to the City's construction of its municipal wastewater treatment plant ("WWTP") in 1951, the City discharged, and/or authorized or permitted the discharge of, all sanitary sewage and industrial wastewater directly to Chequamegon Bay without treatment. Upon information and belief, the sewage and wastewater discharged by the City, and/or authorized or permitted to be discharged, contained COCs that caused, contributed to and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

54. Indeed, the City's historic discharges into Chequamegon Bay caused or contributed to outbreaks of a typhoid fever epidemic that caused deaths throughout the City in the early 1900s. NSPW is informed and believes that the City built the WWTP only after the Wisconsin Board of Health (WDNR's predecessor) threatened penalties and the City was sued by the State of Wisconsin for repeated failure to comply with Wisconsin law.

55. At all relevant times, NSPW is informed and believes the City owned and/or operated (and/or authorized, required or permitted) a sewer system, consisting of surface and/or subsurface sewers, culverts, ditches and other drainage features resulting in the discharge and migration of COCs that caused, contributed to, and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay.

Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

56. Additionally, NSPW is informed and believes that the City also owned and/or operated an open sewer from at least 1901 to 1951—located at the western end of Kreher Park—through which COCs were discharged. Upon information and belief, discharges from the open sewer to the Ashland Site contained COCs, and caused, contributed to, and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

3. The City's Construction and Excavation Activities

57. From approximately 1951 until 1992, the City owned, operated and maintained a WWTP in the Kreher Park portion of the Ashland Site.

58. The City constructed the WWTP in 1951, and subsequently expanded the WWTP in 1973. The WWTP was decommissioned in 1992, but still exists today at the Ashland Site.

59. Upon information and belief, the City conducted activities incident to the construction and expansion of the WWTP—including without limitation excavation, trenching, pumping and discharge of groundwater, grading, and installation of underground equipment—that caused, contributed to, and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redisposing, mobilizing and discharging COCs, and generally accelerating the spread and mobilization of COCs throughout the Ashland Facility.

60. The City has admitted in statements to EPA that it is certain some contaminants were disturbed and disposed during the WWTP construction and expansion. NSPW is informed and believes that the City and its contractors encountered during the construction and expansion of the WWTP wood debris, creosote and other materials, and that large quantities of these

materials were mobilized through their excavation and redisposed at the Ashland Facility. NSPW is informed and believes that the City and its contractors encountered during the construction and expansion of the WWTP sizeable volumes of COC-impacted groundwater, which they pumped directly to Chequamegon Bay without treatment. Upon information and belief, the City disposed of this material with the intent to arrange for the disposal of hazardous substances.

61. NSPW is informed and believes that during the City's period of ownership of Kreher Park and in connection with construction of the WWTP, the City installed a network of subsurface sewers, drainpipes, and/or culverts, including for the purpose of draining (and backfilling) the "pond" portion of Kreher Park—a relic of Schroeder Lumber's wood treatment operation that was created during the demolition of the Schroeder facilities—directly, and without treatment, to the Chequamegon Bay portion of the Ashland Site. Upon information and belief, the City's installation, ownership, maintenance, and/or operation of subsurface sewers, drainpipes, and/or culverts for the purpose of draining the "pond" caused, contributed to and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redisposing, mobilizing and discharging COCs, and generally accelerating the spread of COCs throughout the Ashland Facility.

62. Additionally, in the mid-1980s, the City conducted construction activities to extend Ellis Avenue, which serves as the western border of the Ashland Site. The City excavated a large area of thick, heavy, creosote tar near the railroad tracks, and disposed of the same at the Ashland Site, to the south of the WWTP. The City admits in statements to EPA that it is probable that contaminants were disturbed and moved during the Ellis Avenue extension by the City's own trucks. Upon information and belief, the City's disposal of contaminated soils

from the Ellis Avenue excavation at the Ashland Site caused, contributed to and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redisposing, mobilizing and discharging COCs, and generally accelerating the spread of COCs throughout the Ashland Facility. Upon information and belief, the City disposed of these materials with the intent of arranging for the disposal of hazardous substances.

63. In 1992, the City conducted construction activities to install the Prentice Avenue lift station, on the eastern portion of the Ashland Site. Upon information and belief, the City excavated soils and fill containing COCs, and subsequently deposited and spread the same around the Site as fill, or backfill, with the intent of arranging for disposal of hazardous substances. Upon information and belief, the City's disposal of contaminated soils from the Prentice Avenue excavation at the Site caused, contributed to and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redisposing, mobilizing and discharging COCs, and generally accelerating the spread of COCs throughout the Ashland Facility.

4. The City's Uncontrolled Discharges From The WWTP

64. Agency records indicate that the City discharged COCs to the Ashland Facility as part of its operation and decommissioning of the WWTP. After construction of the WWTP in 1951, the City continued to chronically discharge millions of gallons of raw sewage and wastewater to Chequamegon Bay each year, without treatment. Upon information and belief, the raw sewage and wastewater discharged by the City contained COCs, and caused, contributed to and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City discharged this material with the intent to arrange for the disposal of hazardous substances.

65. Additionally, NSPW is informed and believes that beginning at least as early as the decommissioning of the WWTP in 1992, contaminated water routinely collected in the basement of the WWTP. At all relevant times, the City addressed the infiltration of such contaminated water by pumping the contaminated water directly to the Bay, without treatment. Upon information and belief, the City pumped this material to the Bay with the intent to arrange for the disposal of hazardous substances.

66. In 1997, WDNR tested water collected from the basement of the WWTP, determined that it contained elevated levels of COCs (including naphthalene and other PAH and VOC compounds), and directed the City to cease its uncontrolled discharge of contaminated water to Chequamegon Bay.

67. Upon information and belief, the City's uncontrolled discharges of contaminated water from the WWTP caused, contributed to and/or exacerbated the contamination of the Ashland Facility by, *inter alia*, dispersing, transporting, redisposing, mobilizing and discharging COCs, and generally accelerating the spread and mobilization of COCs throughout the Ashland Facility.

5. The City's Uncontrolled Stormwater Discharges

68. Agency records indicate that the City discharged, and/or authorized or permitted the discharge of, stormwater and/or urban runoff directly to Chequamegon Bay without treatment. The City owned and operated a combined storm and sanitary sewerage system from approximately the 1890s until the early to mid-1980s, at which time the storm sewer system was separated from the sanitary system to reduce flow to the WWTP. The City historically discharged and/or authorized or permitted to be discharged stormwater and/or urban runoff from these systems directly to Chequamegon Bay without treatment, through outfalls within the Ashland Site.

69. Beginning in 2003, the City rerouted certain stormwater lines through a water quality treatment basin located at the north end of 5th Avenue, but continued to discharge, and/or authorize or permit the discharge of, the collected water to Chequamegon Bay through different outfalls in the vicinity of the Kreher Park RV park area, east of the Site. NSPW is further informed and believes that the City continued to discharge, and/or authorize or permit the discharge of, untreated stormwater directly to Chequamegon Bay within the Ashland Site through at least one "bypass" outfall, which runs along Prentice Avenue through the Site, and discharges to Chequamegon Bay in the vicinity of the WWTP.

70. Upon information and belief, the stormwater and/or urban runoff discharged and/or authorized or permitted to be discharged by the City contained COCs that caused, contributed to and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

D. Soo Line Railroad Company

71. From the early 1870s to 1987, Soo Line and/or its predecessors owned and operated on large portions of Kreher Park, including railway operations on the railroad right-of-way, spur tracks located throughout Kreher Park, a commercial dock, rail cars, and other facilities throughout Kreher Park.

72. Upon information and belief, Soo Line and/or its predecessors serviced the former Schroeder Lumber facility, the former MGP and the former commercial dock, and engaged in activities such as loading, off-loading and transporting materials containing COCs, including wood treatment materials, tars, oils and petroleum products, and engaged in or authorized dredging activities in or near the Ashland Facility. Upon information and belief, Soo Line's

and/or its predecessors' operations resulted, caused, contributed to and/or exacerbated the contamination the Ashland Facility.

73. Upon information and belief, Soo Line and/or its predecessors dumped COC-containing substances such as tars and oils and other materials along the railroad tracks and shoreline in Kreher Park. NSPW is informed and believes that Soo Line's and/or its predecessors' railroad activities, including dumping in Kreher Park, caused, contributed to and/or exacerbated the contamination of the Ashland Facility. Upon information and belief, Soo Line dumped this material with the intent of arranging for disposal of hazardous substances.

E. Wisconsin Central Ltd.

74. From approximately 1987 to the present, Wisconsin Central has owned the historic railroad corridor that traverses the Ashland Site. Wisconsin Central acquired the existing railroad corridor, and related facilities, from the Soo Line.

75. Upon information and belief, in or about the mid-1980s, Soo Line created a wholly-owned division titled Lake States Transportation Division to own and operate approximately 2,000 miles of its rail lines, including the property and related facilities Soo Line owned and operated in Ashland at Kreher Park. Wisconsin Central purchased the Lake States division from Soo Line, including the property in Ashland, in or about October of 1987.

76. Upon information and belief, Wisconsin Central also is a successor to relevant liabilities of Soo Line arising out of the ownership and operation of the railroad corridor, and related facilities, within the Ashland Facility.

F. NSPW's Expenditures To Investigate And Cleanup The Ashland Site

77. Beginning with the onset of the Agencies' investigation in 1991, and continuing to the present, NSPW has provided the Agencies with substantial cooperation and support in investigating and remediating the Ashland Site, including PRP investigation costs.

78. Although Defendants caused, contributed to, mobilized and/or exacerbated alleged contamination at the Ashland Facility, to date, NSPW is the only potentially responsible party that has cooperated with the Agencies to perform work and/or fund the investigation and cleanup. NSPW's cooperative actions and commitments have and will impact its ratebase customers.

79. In fulfillment of obligations under the 2012 Consent Decree, NSPW has incurred and will incur significant costs that were or will be necessary and consistent with the National Contingency Plan.

80. In fulfillment of obligations under the 2012 Consent Decree, NSPW has incurred and will incur significant costs to compensate the Trustees for natural resource damages and assessment costs for the Ashland Site.

81. Additionally, NSPW already has incurred significant costs beyond its obligations under the 2012 Consent Decree, including but not limited to costs incurred pursuant to the 2003 AOC, that were necessary and consistent with the National Contingency Plan.

82. To date, NSPW has paid in excess of $18 million to investigate and remediate the Ashland Site—an amount that is well in excess of its equitable share of responsibility.

83. Moreover, the cleanup of the Ashland Facility is not complete, and substantial work remains to be done. Consistent with the National Contingency Plan, NSPW will be spending a significant amount of money in the future to investigate and remediate the Ashland Facility. Although the 2012 Consent Decree specifically does not address but rather reserves claims and defenses related to the Chequamegon Bay portion of the Ashland Site, NSPW has incurred and may incur additional response costs at the Chequamegon Bay portion of the

Ashland Site, and a declaration by this Court concerning those matters will facilitate the full and final resolution of responsibility and liability at the Ashland Site.

FIRST CAUSE OF ACTION

(Claim For Cost Recovery Pursuant To CERCLA § 107)

84. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

85. CERCLA § 107(a), 42 U.S.C. § 9607(a), imposes strict liability on (1) the owner or operator of a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated a facility at which hazardous substances were disposed of, (3) any person who by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances, and (4) any person who accepts or accepted any hazardous substances for transport to a facility from which there is a release or a threatened release.

86. CERCLA § 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B), authorizes the recovery of "necessary costs of response consistent with the national contingency plan" and natural resource damages.

87. The Ashland Facility, including each of its site-specific areas of concern discussed above, is a "facility" within the meaning of CERCLA § 101(9), 42 U.S.C. § 9601(9).

88. The COCs are "hazardous substance[s]" within the meaning of CERCLA § 101(14), 42 U.S.C. § 9601(14).

89. There has been an actual and/or threatened "release" at the Ashland Facility of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

The City of Ashland

90. The City is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

91. The City is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

92. The City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

93. The City acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC's at the Ashland Facility. As a result, the City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

94. As a result of the City's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

95. NSPW seeks reimbursement from the City, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a), for those necessary response costs that NSPW has incurred in investigating

and remediating the hazardous substances that the City has released and/or disposed of to the Ashland Facility that the court does not award under CERCLA § 113(f), 42 U.S.C. § 9613(f).

Soo Line

96. Soo Line is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

97. Soo Line is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

98. Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

99. Soo Line acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC's at the Ashland Facility. As a result, Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

100. As a result of Soo Line's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

101. NSPW seeks reimbursement from Soo Line, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a), for those necessary response costs that NSPW has incurred in investigating and remediating the hazardous substances that Soo Line has released and/or disposed of to the Ashland Facility that the court does not award under CERCLA § 113(f), 42 U.S.C. § 9613(f).

Wisconsin Central

102. Wisconsin Central is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

103. Wisconsin Central is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

104. Wisconsin Central is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

105. As a result of the release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

106. NSPW seeks reimbursement from Wisconsin Central, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a), for those necessary response costs that NSPW has incurred in

investigating and remediating the hazardous substances that were released and/or disposed of to the Ashland Facility that the court does not award under CERCLA § 113(f), 42 U.S.C. § 9613(f).

107. In accordance with CERCLA § 107(a), 42 U.S.C. 9607(a), NSPW is entitled to recover interest on the Ashland Facility response costs NSPW has paid.

108. Pursuant to CERCLA § 113(l), 42 U.S.C. § 9613(l), NSPW has provided a copy of this Complaint to the Attorney General of the United States and the Administrator of the EPA. Pursuant to the 2012 Consent Decree, NSPW has also provided copies to the United States Department of Justice, EPA, and WDNR.

SECOND CAUSE OF ACTION

(Claim For Contribution Pursuant To CERCLA § 113)

109. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

110. CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1), authorizes any person to seek contribution for compelled response costs from any other person with common liability during or following any civil action under CERCLA §§ 106 or 107(a), 42 U.S.C. §§ 9606, 9607(a).

111. The Ashland Facility, including each of its site-specific areas of concern discussed above, is a "facility" within the meaning of CERCLA § 101(9), 42 U.S.C. § 9601(9).

112. The COCs are "hazardous substance[s]" within the meaning of CERCLA § 101(14), 42 U.S.C. § 9601(14).

113. There has been an actual and/or threatened "release" at the Ashland Facility of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

The City of Ashland

114. The City is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

115. The City is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

116. The City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

117. The City acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC's at the Ashland Facility. As a result, the City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

118. As a result of the City's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

119. To the extent that the release and/or disposal of hazardous substances at the Ashland Facility resulted in injuries to natural resources, the City substantially contributed to that injury.

120. As a result of the City's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred costs to compensate the Trustees for alleged natural resource damages and assessment costs under CERCLA § 107(a), 42 U.S.C. § 7607(a).

Soo Line

121. Soo Line is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

122. Soo Line is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

123. Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

124. Soo Line acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC's at the Ashland Facility. As a result, Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

125. As a result of Soo Line's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

126. To the extent that the release and/or disposal of hazardous substances at the Ashland Facility resulted in injuries to natural resources, Soo Line substantially contributed to that injury.

127. As a result of Soo Line's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred costs to compensate the Trustees for alleged natural resource damages and assessment costs under CERCLA § 107(a), 42 U.S.C. § 7607(a).

Wisconsin Central

128. Wisconsin Central is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

129. Wisconsin Central is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

130. Wisconsin Central is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

131. As a result of the release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

132. To the extent that the release and/or disposal of hazardous substances at the Ashland Facility resulted in injuries to natural resources, Wisconsin Central substantially contributed to that injury.

133. As a result of the release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred costs to compensate the Trustees for alleged natural resource damages and assessment costs under CERCLA § 107(a), 42 U.S.C. § 7607(a).

Orphan Shares

134. As a result of insolvent, defunct or otherwise absent parties' release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

135. Insolvent, defunct or otherwise absent parties' releases and/or disposal of hazardous substances at the Ashland Facility were a substantial contributing factor to injuries to natural resources under CERCLA § 101(16) at the Ashland Site.

136. As a result of insolvent, defunct or otherwise absent parties' release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred natural resource damages under CERCLA § 107(a), 42 U.S.C. § 7607(a).

137. NSPW has made direct payments, and has reimbursed payments made by the United States and the State of Wisconsin, in amounts greater than NSPW's equitable share of response costs at the Ashland Facility and natural resource damages at the Ashland Site. NSPW also has made other payments and/or incurred costs related to its in-kind services for the investigation and remediation of the Ashland Facility that are greater than NSPW's equitable share of those costs.

138. Defendants have not expended their equitable share of response costs at the Ashland Facility or damages at the Ashland Site.

139. NSPW seeks and is entitled to contribution from each Defendant, pursuant to CERCLA § 113(f), 42 U.S.C. § 9613(f), for those necessary response costs that NSPW has incurred and will incur in investigating and remediating the hazardous substances that each Defendant has released and/or disposed of to the Ashland Facility, which are not recoverable under CERCLA § 107(a), 42 U.S.C. § 9607(a), and the damages it has incurred in connection with the Ashland Site.

140. NSPW seeks and is entitled to an allocation of response costs among liable parties using such equitable factors as the Court deems appropriate pursuant to CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1). NSPW requests that the Court determine the parties' proper allocable share of response costs at the Ashland Facility and damages at the Ashland Facility and determine that Defendants are liable to NSPW for those costs and damages paid by NSPW that are in excess of NSPW's equitable share and that are properly attributable to Defendants.

141. NSPW seeks and is entitled to recovery or contribution for a share of response costs allocated to insolvent, defunct or otherwise absent parties who have no ability to pay and who are not otherwise affiliated with any PRP at the site ("orphan shares") among liable parties using such equitable factors as the Court deems appropriate pursuant to CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1). NSPW requests that the Court determine the parties' allocable share of the "orphan share" with respect to the costs at or attributable to the Ashland Facility and determine that Defendants are liable to NSPW for those costs and damages paid by NSPW that are in excess of NSPW's equitable share of the "orphan share."

142. In accordance with CERCLA § 107(a), 42 U.S.C. 9607(a), NSPW is entitled to recover interest on the Ashland Facility response costs and compensation paid to the Trustees for natural resource damages and assessment costs at the Ashland Site that NSPW has paid and will pay in the future.

143. Pursuant to CERCLA § 113(l), 42 U.S.C. § 9613(l), NSPW has provided a copy of this Complaint to the Attorney General of the United States and the Administrator of the EPA. Pursuant to the 2012 Consent Decree, NSPW has also provided copies to the United States Department of Justice, EPA, and WDNR.

THIRD CAUSE OF ACTION

(Claim For Declaratory Relief)

144. NSPW realleges and incorporates by reference Paragraphs 1-143 above as if fully set forth herein.

145. CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), provides that in any action for recovery of response costs, the court shall enter a declaratory judgment on liability for response

costs or damages that will be binding in any subsequent action to recover further response costs or damages.

146. The Declaratory Judgment Act, 22 U.S.C. § 2201 *et seq.*, provides that "[i]n a case of actual controversy within its jurisdiction . . ., any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

147. NSPW alleges that each Defendant is liable, in whole or in part, for past and future response costs incurred by NSPW arising from the Ashland Facility. EPA has required, is requiring, and will require NSPW to fund past response costs previously undertaken and future response costs yet to be performed at the Ashland Facilty.

148. NSPW is informed and believes, and on that basis alleges, that each Defendant has refused to acknowledge its fair and reasonable share of past and future investigatory and response costs arising from the Ashland Facility, including without limitation, each Defendant's fair and reasonable share of the share of response costs apportioned to any "orphan" or others who may avoid statutory liability.

149. Accordingly, there has arisen and now exists an actual controversy between NSPW and each Defendant relating to liability and responsibility for the costs at the Ashland Facility, and how such costs should be allocated. The controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

150. Absent a judicial declaration setting forth the parties' rights and obligations, including the appropriate allocable shares under CERCLA, a multiplicity of actions may result, and NSPW may be obligated in the future to pay costs and damages, that under CERCLA, are in fact the responsibility of each Defendant.

151. Pursuant to CERCLA § 113(g)(2), 42 U.S.C. § 9313(g)(2), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, NSPW is entitled to a declaration from this Court, and requests a judgment in its favor as set forth herein. Such a declaration would avoid the potential for a multiplicity of actions related to future costs and effectuate a just and speedy resolution of the issues and liabilities.

FOURTH CAUSE OF ACTION

(Negligence under Wisconsin State Law – Soo Line)

152. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

153. Soo Line failed to exercise due care in its railway operations on the railroad right-of-way and spur tracks located throughout Kreher Park, including but not limited to a failure to exercise due care in loading, off-loading and transporting materials containing COCs, including wood treatment materials, tars, oils and petroleum products.

154. Soo Line's and/or its predecessors' railroad activities, including careless loading and transport operations, resulted in spills, and caused, contributed to and/or exacerbated the contamination of the Ashland Facility.

155. Soo Line and/or its predecessors failed to exercise due care by dumping COC-containing substances such as tars and oils and other materials along the railroad tracks and shoreline in Kreher Park.

156. Soo Line's and/or its predecessors' railroad activities, including dumping in Kreher Park, caused, contributed to and/or exacerbated the contamination of the Ashland Facility.

157. Soo Line knew or, in the exercise of reasonable care, should have known that, as a result of its actions described above, harmful substances, including COCs, were substantially certain to be released to the Ashland Facility, causing, contributing to and/or exacerbating damage at the Ashland Facility. Soo Line failed to exercise due care by failing to take steps to mitigate, clean up, or stop the continuing migration of contaminants from its property to the remainder of the Ashland Facility after it knew or should have known of the existence of such contamination.

158. As a direct and proximate result of the negligent acts and omissions described above, NSPW has incurred costs and damages for which Soo Line is liable to NSPW.

FIFTH CAUSE OF ACTION

(Creation of a Public Nuisance under Wisconsin State Law – Soo Line)

159. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

160. Through its intentional actions and/or omissions, Soo Line released and/or disposed of COCs, which EPA asserts have resulted in health hazards to humans, fish and wildlife, which has caused, contributed to and/or exacerbated these alleged hazards throughout the Ashland Facility. Therefore, these releases amount to the creation of a public nuisance as they constitute an intentional activity or use of property that interferes substantially with the comfortable enjoyment of life, health and safety of others.

SIXTH CAUSE OF ACTION

(Maintenance of a Public Nuisance under Wisconsin State Law – Soo Line)

161. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

162. Soo Line had actual and/or constructive notice of the alleged hazards posed to human health and the environment by concentration of COCs that EPA asserts result in health hazards to humans, fish and wildlife throughout the Ashland Facility.

163. Soo Line negligently maintained and operated the railways and failed to exercise reasonable care by, failing to take steps to mitigate, clean up, or stop the continuing migration of contaminants from its property to the remainder of the Ashland Facility after it knew or should have known of the existence of such contamination.

164. Soo Line failed to abate the public nuisance caused by concentrations of COCs that EPA asserts result in health hazards to humans, fish and wildlife throughout the Ashland Facility.

165. Soo Line is liable to NSPW for compensatory damages as a result of the harm suffered by NSPW due to these releases, and Soo Line must also abate the public nuisance.

SEVENTH CAUSE OF ACTION

(Negligence under Wisconsin State Law – Wisconsin Central)

166. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

167. Wisconsin Central negligently maintained and operated the railways and failed to exercise reasonable care by, failing to take steps to mitigate, clean up, or stop the continuing migration of contaminants from its property to the remainder of the Ashland Facility after it knew or should have known of the existence of such contamination.

168. As a direct and proximate result of the negligent acts and omissions described above, NSPW has incurred costs and damages for which Soo Line is liable to NSPW.

EIGHTH CAUSE OF ACTION

(Wisconsin Common Law Contribution – Soo Line and Wisconsin Central)

169. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

170. Soo Line created and maintained a public nuisance at the Ashland Facility.

171. Wisconsin Central is successor to relevant liabilities of Soo Line arising out of the ownership and operation of the railroad corridor.

172. Soo Line and Wisconsin Central's negligent actions resulted in damages or injury at the Ashland Facility.

173. NSPW expended more than its equitable share of costs related to the damage or injury related to the presence of COCs and wood debris at the Ashland Facility caused by Soo Line.

174. Soo Line and Wisconsin Central have not expended their equitable share of costs or damages at the Ashland Facility.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NSPW prays for judgment and relief, as follows:

a) Against all Defendants for cost recovery, contribution, damages, and/or restitution under CERCLA for past and future response costs, including reasonable attorneys' fees, expert witness' fees, oversight costs, and interest incurred by NSPW to investigate and remediate the contamination at the Ashland Facility, in an amount to be proven at trial;

b) Against all Defendants for compensation paid to the Trustees for alleged natural resource damages, including assessment costs, at the Ashland Site, in an amount to be proven at trial;

c) Against all Defendants for a judicial determination under CERCLA and the federal Declaratory Judgment Act that the Defendants are liable for future response costs, including reasonable attorneys' fees, expert witness' fees, oversight costs, and interest incurred by NSPW to investigate and remediate the contamination at the Ashland Facility;

d) Against all Defendants for costs of suit, reasonable attorneys' fees, consulting fees, expert witness fees, and other fees and expenses incurred herein;

e) Against Wisconsin Central and/or the Soo Line for an award of compensatory damages and costs as a result of the harm suffered by NSPW as a result of the Wisconsin Central and/or the Soo Line's intentional and negligent acts, and/or any order directing Wisconsin Central and/or the Soo Line to abate the public nuisance; and

f) Against all Defendants for such other and further relief as the Court may deem just and proper.

Dated: August 17, 2012

Respectfully submitted,

s/ Ian A.J. Pitz
Ian A.J. Pitz
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Attorneys for Plaintiff
Northern States Power Wisconsin

Exhibit 1

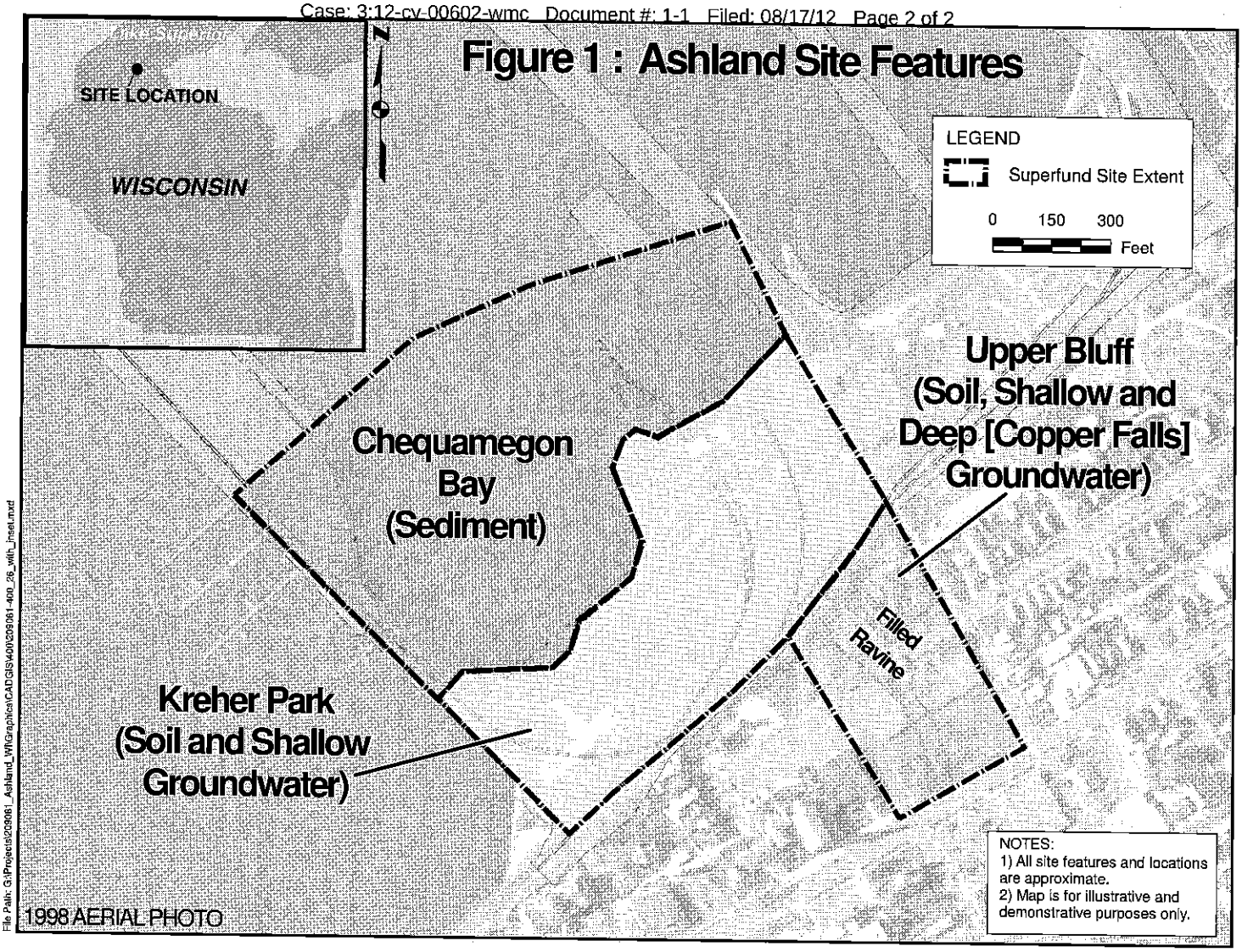
Figure 1 : Ashland Site Features
SITE LOCATION
WISCONSIN
N
LEGEND
Superfund Site Extent
0 150 300
Feet
Chequamegon Bay (Sediment)
Upper Bluff (Soil, Shallow and Deep [Copper Falls] Groundwater)
Filled Ravine
Kreher Park (Soil and Shallow Groundwater)
NOTES:
1) All site features and locations are approximate.
2) Map is for illustrative and demonstrative purposes only.
1998 AERIAL PHOTO
File Path: G:\Projects\209081_Ashland_WI\Graphics\CAD\GIS\400\209081-400_26_with_Inset.mxd

Exhibit 2

Fully Executed
COPY
- Final -

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Ashland/NSP Lakefront Superfund Site
Ashland, Wisconsin

RESPONDENT:

Northern States Power Company,
a Wisconsin Corporation (d/b/a Xcel
Energy, a subsidiary of Xcel Energy Inc.)

ADMINISTRATIVE ORDER ON
CONSENT FOR REMEDIAL
INVESTIGATION/FEASIBILITY STUDY

U.S. EPA Region 5
CERCLA Docket No. V-W- '04-C-764

Proceeding Under Sections 104, 107 and
122 of the Comprehensive Environmental
Response, Compensation, and Liability Act,
as amended, 42 U.S.C. §§ 9604, 9607 and
9622.

TABLE OF CONTENTS

ADMINISTRATIVE ORDER ON CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into by the United States Environmental Protection Agency ("EPA") and Northern States Power Company ("NSP"), a Wisconsin corporation d/b/a Xcel Energy, a subsidiary of Xcel Energy Inc. ("Respondent"). The Order concerns the preparation and performance of a remedial investigation and feasibility study ("RI/FS") as described more fully in the attached Statement of Work for Remedial Investigation/Feasibility Study ("SOW") at the Ashland/NSP Lakefront Superfund Site located at Ashland, Wisconsin ("Site"), and the reimbursement of all Future Response Costs incurred by EPA in connection with and as defined by this Order.

2. This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D, and to the Director, Superfund Division, Region 5 ("Director"), by Regional Delegation Nos. 14-14-A, 14-14-C, and 14-14-D. A hazardous substance has been released or there is a threat of such a release into the environment at the Site, and it is necessary to undertake an RI/FS in order to protect public health or welfare or the environment. The Director further determines that the Respondent will undertake the RI/FS in a proper and timely manner.

3. In accordance with Section 121(f)(1)(F), EPA has notified the State of Wisconsin of negotiations with potentially responsible parties regarding the implementation of the RI/FS for the Site and an opportunity to participate in such negotiations. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the federal natural resources trustee on August 5, 2003, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

4. EPA and Respondent recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Order do not constitute an admission of any liability, culpability or wrongdoing whatsoever. Respondent does not admit, and retains the right to controvert in any other or subsequent proceedings, other than proceedings to implement or enforce this Order, the validity of the findings of fact, conclusions of law and determinations in this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agrees that it will not contest the basis or validity of this Order or its terms. Respondent hereby reserves any and all rights and defenses not otherwise waived herein or by the

operation of this Order.

II. PARTIES BOUND

5. This Order applies to and is binding upon EPA and upon Respondent and its heirs, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

6. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind such party to this document.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with its terms. Respondent shall be responsible for any noncompliance with this Order.

III. STATEMENT OF PURPOSE

8. In entering into this Order, the objectives of EPA and Respondent are: (a) to determine the nature and extent of contamination and any threat to the public health, welfare, or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site or facility, by conducting a Remedial Investigation as more specifically set forth in the SOW attached as Attachment A to this Order; (b) to determine and evaluate alternatives for remedial action (if any) to prevent, mitigate or otherwise respond to or remedy any release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site or facility, by conducting a Feasibility Study as more specifically set forth in the SOW attached as Attachment A to this Order; (c) to collect sufficient data for developing and evaluating effective remedial alternatives; and (d) to recover Future Response Costs incurred by EPA with respect to this Order.

9. The activities conducted under this Order are subject to approval by EPA and shall provide all appropriate and necessary information to assess site conditions and evaluate alternatives to the extent necessary to select a remedy that is consistent with CERCLA and the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. Respondent shall conduct all activities under this Order in compliance with CERCLA, the NCP, 40 C.F.R. Part 300, and all applicable EPA guidance, policies, procedures, and any applicable state law and rules.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"ARARs" means all applicable local, state, and Federal laws and regulations, and all "applicable requirements" or "relevant and appropriate requirements" as defined at 40 CFR § 300.5 and 42 U.S.C. § 9261(d).

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq*.

"Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" shall be the effective date of this Order as provided in Section XXIX.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"WDNR" shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date of this Order in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 33 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 20(c) (Emergency Response), and Paragraph 61 (Work Takeover).

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"National Contingency Plan" or "NCP" shall mean the National Oil and

Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Order" shall mean this Administrative Order on Consent, the Statement of Work, all appendices attached hereto (listed in Section XXVI) and all documents incorporated by reference into this document including without limitation EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Order upon approval by EPA. In the event of conflict between this Order and any appendix, this Order shall control.

"Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

"Parties" shall mean EPA and Respondent.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

"Respondent" shall mean Northern States Power Company, a Wisconsin Corporation d/b/a Xcel Energy, a subsidiary of Xcel Energy Inc.

"Section" shall mean a portion of this Order identified by a Roman numeral.

"Site" shall mean the Ashland/NSP Lakefront Superfund Site, encompassing approximately 20 acres, located in Ashland, Wisconsin, and depicted generally on the map attached as Appendix B, and areas where hazardous substances, pollutants or contaminants have or may have come to be located therefrom.

"State" shall mean the State of Wisconsin.

"Statement of Work" or "SOW" shall mean the Statement of Work for development of an RI/FS for the Site as set forth in Appendix A to this Order. The Statement of Work is incorporated into this Order and is an enforceable part of this Order as are any modifications made thereto in accordance with this Order.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under Section 292.01(5) of the Wisconsin Statutes, or ""hazardous waste" under Section 292.01(7) of the Wisconsin Statutes.

"Work" shall mean all activities Respondent is required to perform pursuant to this Order and the SOW.

V. FINDINGS OF FACT

11. Based on available information, including the Administrative Record in this matter, EPA hereby finds, and, for purposes of enforceability of this Order only, the Respondent stipulates that the factual statutory prerequisites under CERCLA necessary for issuance of this Order have been met. EPA's findings and this stipulation include the following:

a) The Site encompasses approximately 20 acres in Ashland, Wisconsin, including a former manufactured gas plant ("Former MGP") located on property owned by Respondent, a portion of property owned by the City of Ashland and generally known as Kreher Park, Chequamegon Bay of Lake Superior, and a railroad corridor. Approximately 2,810 people live within a 1-mile radius of the Site.

b) The Respondent is the current owner of the Former MGP that is part of the Site.

c) From approximately 1885 to 1947, gas was generated for heating and lighting at the Former MGP. Manufactured gas plant wastes containing hazardous substances were released during the gas manufacturing process at the Former MGP. The Former MGP property was transected on the north by a ravine that ended at the historic shoreline of Chequamegon Bay. Historical maps show that the ravine was open at the start-up of gas production at the Former MGP in the late 1880s, and was filled by the early 1900s.

d) The lakefront portion of the Site has been the location of historic industrial activities, and currently consists of an area owned by the City of Ashland generally known as Kreher Park. Kreher Park was created in the late 1800s and early 1900s by the placement of various fill materials into Chequamegon Bay.

e) Site assessments and investigations conducted at the Site by WDNR, U.S. EPA, and Respondent, have identified high levels of coal tar and other waste materials in groundwater, soil and sediment throughout the Site. Hazardous substances, including VOCs, SVOCs, and PAHs, are present in an aquifer underneath the Former MGP, in soil and a former seep area in Kreher Park, and in sediments in Chequamegon Bay.

f) Pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B), the Site was added to the National Priorities List ("NPL"), 40 C.F.R. Part 300, App. B, on October 7, 2002 (67 FR 56757, Sept. 5, 2002).

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above, and the Administrative Record in this matter, EPA has determined that:

a) The Ashland/NSP Lakefront Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b) The contamination found at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c) The conditions described in the Findings of Fact above constitute an actual and/or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

d) The Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

e) The Respondent is the current owner of the Former MGP within the meaning of Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

f) The actions required by this Order are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and will expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a).

g) EPA has determined that Respondent is qualified to conduct the RI/FS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly if Respondent complies with the terms of this Order and the attached SOW.

VII. ORDER

13. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

14. Selection of Contractors, Personnel. All Work performed pursuant to this Order shall be under the direction and supervision of qualified personnel. Respondent designates the following contractor to undertake, subcontract for, or otherwise complete the Work required by this Order:

URS Corporation

EPA retains the right to disapprove of any other designated contractor according to the terms and conditions of this Order and attached SOW. Respondent shall notify EPA and WDNR in writing of the names, titles, and qualifications of any other personnel, contractors, subcontractors, consultants and laboratories to be used in carrying out Work under this Order at least 10 calendar days prior to commencement of such Work. Respondent shall demonstrate that URS has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. If EPA disapproves of any person(s)' technical qualifications, EPA shall do so in writing, specifying the grounds for such disapproval. Respondent shall notify EPA of the identity and qualifications of the replacement(s) within 30 days of receipt of the EPA's written notice. If EPA subsequently disapproves of the replacement(s), EPA shall do so in writing, specifying the grounds for such disapproval. Subject to the terms and conditions of this Order, EPA reserves the right to terminate this Order and to conduct a complete RI/FS, and to seek reimbursement for costs and penalties from Respondent. During the course of the RI/FS, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

15. Respondent designates the following Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order:

Jerry C. Winslow
Xcel Energy
414 Nicollet Mall (RS-8)
Minneapolis, MN 55401
phone: (612) 330-2928
FAX: (612) 330-6357

EPA approves of Respondent's designated Project Coordinator. EPA retains the right to disapprove any other designated Project Coordinator. If EPA disapproves of any other designated Project Coordinator, EPA shall do so in writing, specifying the grounds for such disapproval. Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 14 days following receipt of EPA's written disapproval.

16. EPA has designated Sharon Jaffess of the Remedial Response Branch, Region 5, (U.S. EPA (SR-6J), 77 West Jackson, Chicago, Illinois 60604), as its Remedial Project Manager

("RPM") for the Site. Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the RPM. The WDNR has designated Jamie Dunn from the WDNR Region Spooner Office as WDNR's Project Manager ("WDNR PM"). Respondent shall direct copies of all submissions required by this Order to the WDNR PM:

Jamie Dunn
State Project Manager
810 W. Maple Street
Spooner, WI, 54801

Respondents are encouraged to make their submissions to EPA and WDNR on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent. Receipt by the RPM of any notice or communication from Respondent relating to this Order shall constitute receipt by EPA. Receipt by the WDNR PM of any notice or communication from Respondent relating to this Order shall constitute receipt by the State.

17. The RPM shall have the authority lawfully vested in a Remedial Project Manager and On-Scene Coordinator (OSC) by the NCP. In addition, the RPM shall have the authority consistent with the National Contingency Plan, to halt any Work required by this Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the the RPM from the area under study pursuant to this Order shall not be cause for the stoppage or delay of Work.

18. EPA shall have the right, subject to Paragraph 15, to change its respective RPM, and WDNR and Respondent shall have the right, subject to Paragraph 15, to change their respective Project Manager and Project Coordinator. Respondent shall notify EPA and WDNR as early as possible before such a change is made, but in no case less than 24 hours before such change. EPA and/or WDNR shall notify Respondent as early as possible of any change of RPM or WDNR PM. The Respondent's initial notification may be made orally, but shall be followed by a written notice within 10 calendar days of oral notification.

19. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. Section 9604(a). The oversight assistant may observe Work and make inquiries in the absence of EPA, but is not authorized to modify the Work Plan.

IX. WORK TO BE PERFORMED

20. Activities and Deliverables. Respondent shall conduct activities and submit

deliverables as provided for in this Order and the attached SOW, which is incorporated by reference, for the completion of the RI/FS. All such Work shall be conducted in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01), "Guidance for Data Usability in Risk Assessment" OSWER Directive #9285.7-05), and guidance referenced therein, and guidances referenced in the SOW, as may be amended or modified by EPA. Respondent acknowledges that WDNR and Respondent have separately conducted sampling and other activities to assess conditions at the Site and to identify the extent and concentration of contamination at the Site. Respondent shall, to the extent practicable, not duplicate the sampling and other activities that have been performed by Respondent and/or WDNR. The general activities and specific deliverables required of Respondent by this Order are identified in the attached SOW. All Work performed pursuant to this Order shall be in accordance with the schedules herein or established in the SOW, and in full accordance with the standards, specifications, and other requirements of the Work Plan and Sampling and Analysis Plan, as initially approved by EPA, and as may be amended or modified by EPA from time to time. Respondent shall submit to EPA and WDNR copies of all plans, reports, submittals and other deliverables required by this Order, the SOW and the RI/FS Work Plan in accordance with the approved schedule set forth in the SOW for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Respondent shall submit in electronic form all portions of any report or other deliverable Respondent is required to submit pursuant to the provisions of this Order.

a. Modification of the Work Plan.

(1) If at any time during the RI/FS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the RPM, with a copy to the WDNR PM, within 14 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into reports and deliverables, such approval not to be unreasonably withheld.

(2) Respondent shall notify the RPM by telephone within 24 hours of discovery of unanticipated or changed circumstances at the Site. In addition to the authorities in the NCP, in the event that EPA determines, in consultation with WDNR, that the immediate threat posed by the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan in writing accordingly. Respondent shall perform the Work Plan as modified or amended, subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution).

(3) EPA may determine that in addition to tasks defined in the initially approved Work Plan, other additional Work may be necessary to accomplish the objectives of the RI/FS as set forth in the SOW for this RI/FS. EPA may require that Respondent perform these

response actions in addition to those required by the initially approved Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS.

(4) Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 7 days of receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek Dispute Resolution pursuant to Section XV (Dispute Resolution). The SOW and/or RI/FS Work Plan shall be modified in accordance with the final resolution of the dispute.

(5) Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan supplement. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

(6) Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Order. Respondent reserves all rights and defenses not otherwise waived herein or by operation of this Order.

b. Off-Site Shipment of Waste Material.

(1) Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA and WDNR. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(2) Respondent shall include in the written notification the following information: (i) the name and location of the facility to which the Waste Material is to be shipped; (ii) the type and quantity of the Waste Material to be shipped; (iii) the expected schedule for the shipment of the Waste Material; and (iv) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(3) The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the remedial investigation and feasibility study. Respondent shall provide the information required by Subparagraph 20(b)(1) and (2) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

(4) Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

c. Emergency Response and Notification of Releases.

(1) In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall immediately notify the RPM, the WDNR PM, the U.S. EPA, Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, and the Wisconsin spill reporting hotline at (800) 943-0003, of the incident and Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

(2) In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the RPM, the WDNR PM, the U.S. EPA, Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, the National Response Center at (800) 424-8802, and the Wisconsin spill reporting hotline at (800) 943-0003. Respondent shall submit a written report to EPA and WDNR within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq*.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

21. After review of any plan, report or other submittal that is required to be submitted for approval pursuant to this Order, EPA, in consultation with WDNR, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing

that Respondent modify the submission; or (e) any combination of the above. EPA's approval shall not be unreasonably withheld. However, EPA shall not modify a submission pursuant to Subparagraph 21(c) without first providing Respondent at least one notice of deficiency and an opportunity to cure within 21 days thereof, except where to do so would cause serious disruption to the Work or where previous submission(s) of the same plan, report or other submittal have been disapproved due to material defects and the deficiencies in the latest submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

22. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 21(a), (b), or (c), Respondent shall proceed to take any action required by the plan, report or other submittal, as approved or modified by EPA subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 21(c) and the submission has a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties) and to perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from Respondent for its costs; and/or seek any other appropriate relief.

23. Resubmission of Plans.

a. Subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution), upon receipt of a notice of disapproval pursuant to Subparagraph 21(d) or (e), Respondent shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other submittal for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the 21-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 24 and 25.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Subparagraph 21(d) or (e), Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the following deliverables: RI/FS Work Plan and Sampling and Analysis Plan, Draft Remedial Investigation Report, Treatability Testing Work Plan and Sampling and Analysis Plan, if required, and Draft Feasibility Study Report. While awaiting EPA approval on these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Order.

d. For all remaining deliverables not enumerated above in subparagraph 23.c., or otherwise addressed in the SOW, Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the RI/FS and Respondent reserves all rights and defenses not otherwise waived herein.

24. In the event that a resubmitted plan, report or other submittal, or portion thereof, is disapproved by EPA, EPA may again require Respondent to correct the deficiencies, in accordance with the preceding Paragraphs subject only to Respondent's right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution). EPA also retains the right to modify or develop the plan, report or other submittal. Respondent shall implement any such plan, report, or submittal as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XV (Dispute Resolution).

25. If upon resubmission, a plan, report, or submittal is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or submittal timely and adequately unless Respondent invokes the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

26. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS Report, Respondent shall incorporate and integrate information supplied by EPA into the final RI/FS Report.

27. All plans, reports, and other items required to be submitted to EPA pursuant to this Order shall, upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other submittal required to be submitted to EPA pursuant to this Order, the approved or modified portion shall be enforceable pursuant to this Order.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA AVAILABILITY

28. Quality Assurance. Respondent shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the QAPP and guidances identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994,

"Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements.

29. Sampling.

a. All results of sampling, tests, modeling or other data (including raw data) generated by Respondent, or on Respondent's behalf, during implementation of this Order, shall be submitted to EPA and WDNR in the subsequent monthly progress report as described in the attached SOW. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall verbally notify the RPM and the WDNR PM at least 14 business days prior to conducting significant field events as described in the SOW, Work Plan or sampling and analysis plan. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected by Respondent in implementing this Order. All split samples of Respondent shall be analyzed by the methods identified in the QAPP.

30. Data Availability.

a. The Respondent shall submit to EPA and WDNR all data or other information generated by the RI/FS activities required by this Order in a manner consistent with the schedules and submittals set forth in this Order and the SOW. Along with the data, Respondent shall also include the following certification signed by a person who supervised or directed the preparation of that report:

> Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this data, the information submitted is true, accurate, and complete.

b. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA and WDNR under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA. 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA and WDNR, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent agrees not to assert

confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring. Respondent shall segregate and clearly identify all documents or information submitted under this Order for which Respondent asserts business confidentiality or attorney work-product or attorney-client privilege claims.

31. In entering into this Order, Respondent and EPA waive any objections to any data collected or generated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the quality assurance/quality control (QA/QC) procedures required by the Order or any EPA-approved Work Plans or Sampling and Analysis Plans and historic data for the Site that has met EPA validation requirements. If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within 15 days of the monthly progress report containing the data.

XII. SITE ACCESS AND INSTITUTIONAL CONTROLS

32. If the Site, or any other property where access is needed to implement this Order, is owned or controlled by Respondent, commencing on the Effective Date, Respondent shall, at all reasonable times, provide EPA, WDNR, and their authorized employees, contractors, agents, consultants, designees, and representatives access to enter and freely move about all property at the Site and off-site areas where Work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the the Site or Work pursuant to this Order; reviewing the progress of Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to Work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved Health and Safety Plans.

33. Where any action undertaken pursuant to this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the RPM. Respondent shall immediately notify the RPM and the WDNR PM if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" include the payment of reasonable sums of money in consideration of access, but only to the extent such payments are requested by parties that are not potentially liable persons pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent shall describe in writing their efforts to obtain access. EPA may then assist Respondent in gaining

access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If after using its best efforts to obtain access pursuant to this Paragraph, and such access is delayed or denied due to the actions of someone other than Respondent, then Respondent may claim *force majeure* pursuant to Section XVII (Force Majeure), to toll or extend any deadlines affected by the delayed or denied access.

34. Notwithstanding any provision of this Order, EPA and WDNR retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

35. EPA may obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate the Order in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that Site, and shall reimburse EPA for all costs incurred in performing such activities. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, Respondent agrees to indemnify the U.S. Government as specified in Section XXIV of this Order.

XIII. COMPLIANCE WITH OTHER LAWS

36. Respondent shall comply with all applicable local, state and federal laws and regulations when performing the RI/FS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the activities is to be conducted off-site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

37. During the pendency of this Order and for a minimum of 10 years after completion of construction of any remedial action, Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work under this Order, to work performed at the Site prior to this Order, or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after commencement of construction of any remedial action, Respondent shall also instruct their contractors and agents to preserve all

documents, records, and information of whatever kind, nature or description relating to performance of the Work.

38. At the conclusion of this document retention period, Respondent shall notify EPA and WDNR at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA or WDNR, Respondent shall deliver any such records or documents to EPA and WDNR. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent.

39. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. DISPUTE RESOLUTION

40. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes concerning this Order and the SOW. The Parties shall attempt to resolve any disagreements concerning this Order and SOW expeditiously and informally.

41. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Future Response Costs, Respondent shall notify EPA in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. This written notice shall include a statement of the issues in dispute, the relevant facts upon which the dispute is based, all factual data, analysis and opinion supporting the Respondent's position, and all supporting documentation on which Respondent relies ("Statement of Position"). Unless the Respondent's objection(s) has/have been resolved informally, EPA shall provide Respondent a written response specifically addressing the points raised in the Statement of Position. EPA and Respondent shall have 90 days from EPA's receipt of Respondent's Statement of Position to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended by agreement of both the Respondent and EPA.

42. Any agreement reached by the Parties pursuant to this Section shall be in writing and

shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, the Superfund Division Director will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Superfund Division Director's decision, whichever occurs. As provided in Section XVI (Stipulated Penalties) of this Order, penalties shall continue to accrue during any dispute resolution period, but Respondent shall be liable for only those penalties required by the agreement reached or by the Superfund Division Director's decision, whichever occurs.

XVI. STIPULATED PENALTIES

43. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 44 for failure to comply with the requirements of this Order specified below unless excused under Section XVII (Force Majeure) or under XV (Dispute Resolution). "Compliance" by Respondent shall include completion of the activities pursuant to this Order or any Work Plan or other plan approved pursuant to this Order identified below in accordance with all applicable requirements of law, this Order, the SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved pursuant to this Order.

44. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per day for any noncompliance identified in Subparagraph 44(b):

Penalty Per Violation Per Day	Period of Noncompliance
$ 250.00	1st through 14th day
$ 500.00	15th through 30th day
$ 1000.00	31st day and beyond

b. Compliance Milestones

i) Failure to submit the RI/FS Work Plan/Field Sampling Plan, Quality Assurance Project Plan or Health and Safety Plan;

ii) Failure to submit the RI/FS Report;

iii) Failure to submit any treatability study, if required;

iv) Failure to submit the Remedial Alternatives Technical Memorandum, Alternatives Screening Technical Memorandum, Comparative Analysis of Alternatives Technical Memorandum (Remedial Alternatives Evaluation);

v) Failure to submit the Feasibility Study Report;

vi) Failure to submit monthly progress reports;

vii) Failure to meet any scheduled deadline in the Order or attached SOW.

viii) Failure to meet any other obligation, including timely payment of Future Response Costs, required by this Order.

45. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 21st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA, Region 5 Superfund Division Director, under Paragraph 42 of Section XV (Dispute Resolution), during the period, if any, beginning on the 1st day after the Negotiation Period begins until the date that the Superfund Division Director issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

46. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA shall give Respondent written notification of the same and describe the noncompliance with particularity. EPA shall also send Respondent a written demand for the payment of any penalties. Penalties shall accrue as provided in Paragraph 45 regardless of whether EPA has notified Respondent of a violation.

47. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by corporate check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to: U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, IL 60673, shall indicate that the payment is for stipulated penalties, and shall reference the Site Spill ID Number B5 N5, the EPA Docket Number of this Order, and the name and address of the party making payment, or by electronic transfer as follows: payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. EPA account in

accordance with current EFT procedures, referencing the EPA Region and Site Spill ID Number B5 N5, and EPA Account # 1113399. Payment shall be made to Bank One ABA # 071000013. Respondent shall send notice of electronic transfers to EPA that payment has been made to:

Financial Management Officer
U.S. Environmental Protection Agency — Region 5
Mail Code MF 10-J
77 W. Jackson Blvd.
Chicago, IL 60604.

Copies of check(s) or notice of electronic transfers paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to:

Sharon Jaffess
Remedial Project Manager
United States Environmental Protection Agency
77 West Jackson Blvd., Mail Code SR-6J
Chicago, Illinois 60604-3590

AND

Craig Melodia
Associate Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard, C-14J
Chicago, Illinois 606064-3590.

48. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

49. Penalties shall continue to accrue as provided in Paragraph 45 during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of the Superfund Division Director's decision.

50. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 47.

51. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9722(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §

9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 61. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XVII. FORCE MAJEURE

52. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, *force majeure* is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

53. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 5 days of when Respondent' Project Coordinator first had actual knowledge that the event might cause a delay. Within 10 days thereafter, Respondent shall provide to EPA in writing, with a copy to WDNR, an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

54. If EPA agrees that the delay or anticipated delay is attributable to *a force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation not affected by the *force majeure* event. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. PAYMENT OF RESPONSE COSTS

55. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP until EPA issues the notice of completion of the Work pursuant to Section XXX. On a periodic basis, EPA will send Respondent a bill requiring payment that consist of an itemized cost summary report. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 57 of this Order. Respondent shall make all payments required by this Paragraph by corporate check or electronic transfer pursuant to the instructions for payment of stipulated penalties in Paragraph 47.

The total amount to be paid by Respondent shall be deposited in the Ashland Lakefront/NSP Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the Hazardous Substance Superfund.

b. At the time of payment, Respondent shall send notice that payment has been made to:

Sharon Jaffess
Remedial Project Manager
United States Environmental Protection Agency
77 West Jackson Blvd., Mail Code SR-6J
Chicago, Illinois 60604-3590

AND

Craig Melodia
Associate Regional Counsel
U.S. EPA - Region 5
77 West Jackson Boulevard, C-14J
Chicago, Illinois 606064-3590

56. Subject to Respondent's right to contest payment of any Future Response Costs as provided in Paragraph 57, in the event that the payment for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondent shall make all

payments required by this Paragraph in the manner described in Paragraph 55.

57. Respondent may contest payment of any Future Response Costs under Paragraph 55 if it determines that EPA has made an accounting or invoicing error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30 day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 55. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Wisconsin and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay from the escrow account established for that purpose pursuant to Paragraph 57, the sums due (with accrued interest) to EPA in the manner described in Paragraph 55. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 55. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

58. In consideration of the actions that will be performed and the payments that will be made by Respondent pursuant to the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to otherwise take any administrative action against Respondent, it heirs, successors and assigns, pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations pursuant to this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondent, it heirs, successors and assigns, and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS

59. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. Respondent reserves any and all rights and defenses not otherwise waived herein or by operation of this Order.

60. The covenant not to sue set forth in Section XIX (Covenant Not to Sue by EPA) above does not pertain to any matters other than those expressly identified therein. EPA and Respondent reserve, and this Order is without prejudice to, all rights of EPA against Respondent, and all defenses of Respondent, with respect to all other matters, including, but not limited to:

a. claims based on a failure by Respondent to meet a requirement of this Order;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

61. Work Takeover. In the event EPA determines that Respondent (i) has ceased implementation of any portion of the Work and such cessation is not agreed to by EPA, (ii) is seriously or repeatedly deficient or late in their performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted. Costs incurred by EPA in performing the Work pursuant to this Paragraph shall be considered Future Response Costs

that Respondent shall pay pursuant to Section XVIII (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

62. Except as otherwise reserved herein, Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees, with respect to the Work, Future Response Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

63. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. OTHER CLAIMS

64. By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

65. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

66. No action or decision by U.S. EPA pursuant to this Order shall give rise to any right to judicial review.

XXIII. CONTRIBUTION PROTECTION

67. The Parties agree that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Future Response Costs. Nothing in this Order precludes the United States or Respondent from asserting any claims, causes of action, or demands against any person not parties to this Order for indemnification, contribution, or cost recovery.

XXIV. INDEMNIFICATION

68. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on Respondent's behalf or under Respondent's control, in carrying out activities pursuant to this Order. The United States and the State of Wisconsin shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

The Federal Tort Claims Act, 28 U.S.C. §§ 2671, 2680, provides coverage for injury or loss of property, or injury or death caused by the negligent or wrongful act or omission of an employee of EPA while acting within the scope of his or her employment, under circumstances where EPA, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. If an EPA employee is injured while acting within the scope of his or her employment, government liability for that injury will generally be dictated by the provisions of the Federal Employees Compensation Act, 5 U.S.C. § 1801.

69. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

70. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any

person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

XXV. FINANCIAL ASSURANCE

71. Upon the written request of EPA to Respondent, Respondent shall establish and maintain within 30 days of such request financial security for the benefit of EPA in the amount of $ 1.5 million in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;

b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;

c. a trust fund administered by a trustee acceptable in all respects to EPA;

d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents; including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f);

f. a corporate guarantee to perform the Work by Respondent, including a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f); and/or

g. a demonstration that Respondent possesses sufficient net worth to complete the Work required by this Order as evidenced by audited financial statements determined by EPA to be sufficient for these purposes.

72. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section

(including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 71, above. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

73. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 71.e. or 71.f. of this Order, Respondent shall (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Order, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of $1,500,000 for the Work at the Site shall be used in relevant financial test calculations.

74. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work had diminished below the amount set forth in Paragraph 71 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may reduce the amount of security in accordance with the written decision resolving the dispute.

75. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

XXVI. SEVERABILITY/INTEGRATION/APPENDICES

76. If a court of competent jurisdiction issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent and EPA shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

77. This Order and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order. The following appendices are

attached to and incorporated into this Order:

"Appendix A" is the SOW.

"Appendix B is the map of the Site

XXVII. SUBSEQUENT MODIFICATION

78. The RPM may, in consultation with WDNR, make modifications to any plan or schedule or SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the parties.

79. If Respondent seeks permission to deviate from any approved Work Plan or schedule or SOW, Respondent's Project Coordinator shall submit a written request to the RPM, with a copy to the WDNR PM, for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 78.

80. No informal advice, guidance, suggestion, or comment by the RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVIII. PUBLIC COMMENT

81. The administrative record file for the proposed remedial action, including the Remedial Investigation Final Report and the Feasibility Study Final Report, the Risk Assessment, and documents considered by EPA in developing the Proposed Plan, will be available for public review and comment pursuant to 40 C.F.R. § 300.430, and EPA's Community Relations Plan. Following the public review and comment period, EPA will notify Respondent of the remedial action alternative(s) selected by EPA for implementation at the Site.

XXIX. EFFECTIVE DATE

82. This Order shall be effective upon signature by the Director, Superfund Division, U.S. EPA Region 5.

XXX. NOTICE OF COMPLETION OF WORK

83. When EPA determines, after EPA's review of the Final Feasibility Study Report, that all Work has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, EPA will provide written notice of such completion to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Feasibility Study Report in accordance with the EPA notice, subject to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution). Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order subject to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

Signature Page for
Ashland Lakefront Superfund Site
Administrative Order by Consent
for Remedial Investigation/Feasibility Study
Docket No. ~~V-W- '04-C-764~~

Agreed this 6 day of November, 2003.

For Respondent Northern States Power Company, a Wisconsin corporation, (d/b/a Xcel Energy, a subsidiary of Xcel Energy Inc.)

Michael L. Swenson

Title: President

Signature Page for
Ashland Lakefront Superfund Site
Administrative Order by Consent
for Remedial Investigation/Feasibility Study
Docket No. V-W-'04-C-764

It is so ORDERED AND AGREED this 14th day of Nov., 2003.

BY: _____ DATE: NOV 14 2003

William E. Muno
Director, Superfund Division
Region 5
U.S. Environmental Protection Agency

EFFECTIVE DATE: NOV 14 2003

APPENDIX A

STATEMENT OF WORK

STATEMENT OF WORK
FOR A REMEDIAL INVESTIGATION AND FEASIBILITY STUDY
AT THE ASHLAND/NORTHERN STATES POWER LAKEFRONT SITE
ASHLAND, ASHLAND COUNTY, WISCONSIN

I. BACKGROUND

1. What has come to be known as the Ashland/Northern States Power Lakefront Site (Site) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA/SARA or Superfund), was first identified by a property investigation concerning expansion of the City of Ashland's waste water treatment plant. The investigation revealed soil, wood fill, and groundwater contamination by hazardous substances including, but not limited to, benzene, xylene, benzo(a)pyrene, and naphthalene. Subsequently, the plan for waste water treatment plant expansion in that location was abandoned and the State of Wisconsin Department of Natural Resources (WDNR) followed-up on the property contamination situation.

2. In 1994, WDNR contracted with the firm Short Elliot Hendrickson, Inc. (SEH) to perform a more detailed characterization of the subject property. A historic review was performed and potential contaminant source areas were identified. Pursuant to State law, WDNR issued notification of potential responsibility to the owners of the contaminated property including: the City of Ashland; the Wisconsin Central Railroad; and Northern States Power Company (d.b.a. Xcel Energy, a subsidiary of Xcel Energy Inc.). Since that time, WDNR and Northern States Power Company (NSP) have conducted numerous investigations on portions of the contaminated properties and nearby offshore sediments.

3. In December 2000, the subject property was proposed for the National Priorities List. Based on data collected from the aforementioned investigations, the subject property was added to the National Priorities List in September 2002. The United States Environmental Protection Agency's (EPA's) Contaminated Sediments Technical Advisory Group (CSTAG) reviewed the available information on the Site and provided recommendations based on EPA's Directive 9285.6-08, *Principles for Managing Contaminated Sediment Risks at Hazardous Waste Sites* (February 12, 2002). This guidance is to assist site managers make scientifically sound and nationally consistent risk management decisions at contaminated sediment sites.

4. Due to the historic involvement of WDNR in the investigation of this site under state law, and pursuant to a Cooperative Agreement with EPA, EPA intends to consult regularly with WDNR and to seek WDNR input on key decisions and approvals that EPA issues pursuant to the AOC and this SOW.

II. PURPOSE

1. This Statement of Work (SOW) sets forth the requirements for conducting a supplemental Remedial Investigation and Feasibility Study (RI/FS) at the Site. It is considered a supplemental RI/FS because WDNR, through its State authorities and under a cooperative agreement with EPA, and the Respondent, have already completed a significant portion of work that can be utilized in an RI/FS pursuant to Superfund.

2. This SOW defines the necessary steps to complete an RI/FS pursuant to Superfund, addressing the CSTAG recommendations, and utilizing the existing Site data set to the greatest extent practicable. That is, all of the historic data collected pursuant to the City of Ashland's original property investigation work, WDNR's contaminant investigation work, as well as NSP's contaminant investigation work, data previously validated by EPA, and any other technical reports available in the peer-reviewed published literature, shall be utilized qualitatively or quantitatively, depending upon the particular data's level of quality assurance/quality control levels (e.g., as referenced against EPA's requirements as defined in *Guidance for Data Useability in Risk Assessment (Part A) Final* (PB92-963356, April 1992).

3. It is expected that this RI/FS can be expedited and streamlined because of the pre-existing data set and in-depth knowledge already established by WDNR and the Respondent. The Respondent shall utilize, to the extent practicable, previously existing documents to help expedite the work.

4. As this RI/FS work is a continuation of an extensive investigation coordinated by the WDNR and the Respondent, this work is specifically focused on filling the CSTAG, WDNR, and EPA identified data gaps, determining the degree and extent of contamination, and completing risk assessments in accordance with the most recent EPA guidance.

5. While the SOW is designed to focus on four areas, the upper bluff/filled ravine, the Copper Falls Formation, Kreher Park, and the Chequamegon Bay sediments, the Work will include any areas where site-related hazardous substances, pollutants or contaminants have or may have come to be located.

6. The RI Report shall fully evaluate the nature and extent of hazardous substances, pollutants or contaminants at or from the Site. The RI Report shall also assess the risk these hazardous substances, pollutants or contaminants present to human health and the environment. The RI Report shall provide sufficient data to develop and evaluate effective remedial alternatives. The FS Report shall evaluate alternatives for addressing the impact to human health and the environment from hazardous substances, pollutants or contaminants at the Site.

7. The RI/FS shall comply with requirements and guidance for RI/FS studies and reports, the Comprehensive Environmental Response, Compensation and Liability

Act (CERCLA), as amended, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300) as amended. At a minimum, the Respondent shall prepare and complete the RI and FS Reports consistent with the *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA* (EPA/540/G-89/004, October 1988) (RI/FS Guidance), and any other guidance that the EPA uses in conducting or submitting deliverables for a RI/FS, as well as any additional requirements in the AOC. The RI/FS Guidance describes the report format and the required report content. Exhibit A sets forth a partial list of guidance used by EPA for a RI/FS.

8. The Respondent shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RI/FS at the Site, except as otherwise specified herein.

9. As specified in CERCLA Section 104(a)(1), as amended by SARA, EPA will provide oversight of the Respondent's activities throughout the RI/FS, including all field sampling activities. The Respondent shall support EPA's initiation and conduct of activities related to the implementation of oversight activities.

10. At the completion of the RI/FS, EPA, in consultation with WDNR, will be responsible for the selection of a Site remedy and will document this selection in a Record of Decision (ROD). The remedial action selected by EPA will meet the cleanup standards specified in CERCLA Section 121. That is, the selected remedial action will be protective of human health and the environment, will be in compliance with, or include a waiver of, applicable or relevant and appropriate requirements of other laws, will be cost-effective, will use permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable, and will address the statutory preference for treatment as a principal element. The final RI and FS Reports as adopted by EPA will, with the administrative record, form the basis for the selection of the Site's remedy and will provide the information necessary to support the development of the ROD.

III. DOCUMENT REVIEW

1. The Respondent shall submit all documents or deliverables required as part of this SOW to the EPA, with a copy to WDNR, for review by the agencies and approval by EPA. After review of any plan, report or other submittal/deliverable which is required to be submitted for approval pursuant to the AOC, EPA, after reasonable opportunity for review and comment by the WDNR, may:

   A. Approve, in whole or in part, the submission;

   B. Approve the submission upon specified conditions;

   C. Modify the submission to cure the deficiencies;

D. Disapprove, in whole or in part, the submission, directing the Respondent to modify the submission; or

E. Any combination of the above to conform the submission to the requirements of the AOC, SOW, NCP or EPA guidance.

2. If EPA requires revisions, EPA shall follow the process set forth in Paragraph 21 of the AOC.

3. Electronic Data Management and Analysis Network (EDMAN) is a new data management system being used by the Superfund Division of EPA Region 5 that will allow the Respondent to submit Superfund data electronically. All data collected after the Effective Date of the AOC shall be submitted on a 3.5" diskette, a ZIP™ or ZIP™-compatible disk, or a CD. As specified elsewhere in this SOW, regularly required hard copies of all reports and data summaries will also be sent to the attention of the EPA RPM and WDNR Project Manager. However, in addition, the electronic data must also be submitted on the 3.5" diskette, a ZIP™ or ZIP™-compatible disk, or a CD to the following address, with a cover letter:

EDMAN Data Coordinator
United States EPA (S-6J)
77 West Jackson Blvd.
Chicago, IL 60604.

The cover letter should include:

- Site name, data collection dates, and contact person;
- Explanations about any errors detected and about any revisions to data submitted previously; and
- Any proposed additions to the list of valid values.

The EPA RPM and WDNR Project Manager should also receive a copy of the cover letter.

All of the electronic data requirements are specified at:
http://www.epa.gov/region5/superfund/edman

The Respondent can download the Superfund Electronic Data Deliverable Specification Manual from that website.

IV. SCOPE

Respondent shall complete the following tasks as part of this RI/FS:

Task 1: Project Scoping and RI/FS Planning Documents (see A, B, and C as follows);

Task 2: Community Relations Support, as requested;

Task 3: Site Characterization (the Remedial Investigation);

Task 4: Remedial Investigation Report (including human health and ecological risk assessment);

Task 5: Development and Screening of Alternatives (Technical Memorandum);

Task 6: Treatability Studies;

Task 7: Detailed Analysis of Alternatives (FS Report); and

Task 8: Progress Reports

Details regarding the aforementioned eight (8) tasks are specified as follows:

TASK 1: PROJECT SCOPING AND RI/FS PLANNING DOCUMENTS

(A) Technical Letter Report:

1. WDNR had previously contracted with Short Elliott Hendrickson, Inc. (SEH) to complete an RI/FS Work Plan, based on the data gaps identified by WDNR, EPA, and the CSTAG. As such, SEH has prepared an RI/FS Work Plan. The Respondent shall be provided with the WDNR/SEH RI/FS Work Plan no later than seven (7) days after the Effective Date of the AOC.

2. The Respondent has also prepared an RI/FS Work Plan through its contractor, URS. Within thirty (30) days of receipt of the WDNR/SEH Work Plan, the Respondent shall submit a Technical Letter Report to EPA with a copy to WDNR. This Technical Letter Report is not subject to "approval" by EPA and WDNR. Instead, it will serve as the basis for technical discussions at the Technical Scoping Meeting described in (B), below.

3. The Technical Letter Report will contain a concise description of the similarities and differences between the WDNR/SEH Work Plan and the URS RI/FS Work Plan, with regard to field data collection tasks, conceptual site models, and other tasks necessary for completion of an RI/FS at this Site. The Technical Letter Report will not include any qualitative commentary on site histories and descriptions and analysis of previously collected data. Final descriptions of the Site, its history, and analysis of previously collected data will be made in the RI/FS Report. The variations in descriptions present in these two RI/FS Work Plans are not based on the sum total of all of the data and as such, it is expected that all parties will not agree on the precise language and interpretation of data at this time. The goal of the Technical Letter Report instead, is to:

    a) Provide a factual summary of the existing historical data and each data set's usage (e.g., qualitative or quantitative) in completing the RI/FS; and

    b) Identify the technical similarities and differences in the WDNR/SEH and URS

Work Plans for the purpose of identifying/addressing data gaps.

(B) Technical Scoping Meeting:

1. The Respondent's Technical Letter Report will serve as the basis for the Technical Scoping Meeting.

2. EPA, WDNR, and the Respondent will attempt to hold the Technical Scoping Meeting within seven (7) to fourteen (14) business days of EPA's receipt of the Respondent's Technical Letter Report.

3. The goal of the Technical Scoping meeting is to resolve any major technical discrepancies between the two RI/FS Work Plans. That is, precise language describing the site, describing or interpreting previous data will not be discussed. Instead, the meeting will focus on the future use of the various sets of historical data based on its QA/QC; types of field data collection to be performed to address the identified data gaps; the data gaps themselves, and the conceptual site models.

4. EPA will provide the Respondent with a meeting summary subsequent to the Technical Scoping Meeting.

(C) Prepare and Submit Revised RI/FS Planning Documents (Work Plan/Field Sampling Plan/Quality Assurance Project Plan):

(1) General Requirements

a. Within thirty (30) days of receipt of the Technical Scoping Meeting summary, Respondent will submit Revision 01 to its August 22, 2003 Draft RI/FS Work Plan, based upon its review of the WDNR/SEH Work Plan, its Technical Letter Report, and the agreements made during the Technical Scoping Meeting. This Work Plan will include: the RI/FS Work Plan with a project schedule, the Field Sampling Plan, the Quality Management Plan, and the Quality Assurance Project Plan. These documents will be submitted to EPA, with a copy to WDNR, for review by the agencies, and approval by EPA, pursuant to Section III, Document Review.

b. The objective of the RI/FS Planning Documents is to develop an RI/FS strategy and general management plan that accomplishes the following:

- A remedial investigation that determines the nature and extent of the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site. In performing this investigation, the Respondent shall gather sufficient data, samples, and other information to fully characterize the nature and extent of the contamination at the Site, to support the human health and ecological risk assessments, and to provide sufficient data for the identification and evaluation of remedial alternatives for this Site.

- A feasibility study that identifies and evaluates alternatives for the appropriate extent of remedial action necessary to prevent and/or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site.

- When scoping the specific aspects of the project, the Respondent shall meet with EPA to discuss all significant project planning decisions and special concerns associated with the Site, if necessary.

- The RI/FS Planning Documents shall include a detailed description of the tasks the Respondent shall perform, the information needed for each task, a detailed description of the information the Respondent shall produce during and at the conclusion of each task, and a description of the work products that the Respondent shall submit to EPA and WDNR. This includes the deliverables set forth in this SOW; a schedule for each of the required activities consistent with the RI/FS Guidance and other relevant guidance; and a project management plan including a data management plan (e.g., requirements for project management systems and software, minimum data requirements, data format and backup data management), monthly reports to EPA and WDNR, and meetings and presentations to EPA and WDNR at the conclusion of each major phase of the RI/FS. The Respondent shall refer to Appendix B of the RI/FS Guidance for a description of the required contents of the RI/FS Planning Documents.

- The RI/FS Planning Documents shall include the preliminary objectives for the remedial action at the Site; preliminary potential state and federal ARARs (chemical-specific, location-specific and action-specific); a description of the Site management strategy developed by the Respondent and EPA during scoping; a preliminary identification of remedial alternatives; and data needs for fully characterizing the nature and extent of the contamination at the Site, evaluating risks and developing and evaluating remedial alternatives. The RI/FS Planning Documents shall reflect coordination with treatability study requirements, if any. The RI/FS Planning Documents shall also include a process for and manner of refining and/or identifying additional Federal and State ARARs, and for preparing the human health and ecological risk assessments and the feasibility study.

(2) Specific Requirements

a. The Respondent shall develop the RI/FS Planning Documents as described in "Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA," October, 1988 and shall include:

i. Site Background

- A brief summary of the Site location, description, physiography, hydrology, geology, demographics, ecological, cultural and natural resource features, Site history, description of previous investigations and responses conducted at the Site by local, state, federal, or private parties, and Site data evaluations and project planning completed during the scoping process.

- The Site background section shall discuss areas of waste handling and disposal activities, the locations of existing groundwater monitoring wells, groundwater extraction wells, and previous surface water, sediment, soil, groundwater, and air sampling locations. The RI/FS Work Plan/Field Sampling Plan shall include a summary description of available data and identify areas where hazardous substances, pollutants or contaminants were detected and the detected levels. This includes the data in previous reports. The RI/FS Work Plan/Field Sampling Plan shall include tables displaying the minimum and maximum levels of detected hazardous substances, pollutants or contaminants in Site areas and media.

ii. Work Plan/Field Sampling Plan

- The Work Plan/Field Sampling Plan (FSP) portion of the RI/FS Planning Documents shall be prepared to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data meet the Site-specific Data Quality Objectives as established in the Quality Assurance Project Plan (QAPP) and FSP. All sampling and analyses performed shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. The Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with EPA guidance.

- Upon request by EPA, the Respondent shall have such a laboratory analyze samples submitted by EPA for quality assurance monitoring. The Respondent shall provide EPA with the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. The Respondent shall also ensure the provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, *Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites.*

- Upon request by EPA, the Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by the Respondent or their contractors or agents. The Respondent shall notify EPA not less than fourteen (14) business days in

advance of any sample collection activity. EPA shall have the right to take additional samples that it deems necessary.

iii. Data Gap Description/Data Acquisition

As part of the FSP, the Respondent shall continue its analysis of existing data, which was initiated pursuant to Task 1. The Respondent shall identify those areas of the Site and nearby areas that require further data and/or evaluation in order to define the extent of hazardous substances, pollutants or contaminants. This Section of the FSP shall include a description of the number, types, and locations of samples to be collected. The FSP shall include an environmental program to accomplish the following:

- Site Reconnaissance

  The Respondent shall conduct site surveys which may include, but not be limited to: property, boundary, utility rights-of-way, and topographic to assist in map preparation; land surveys; topographic mapping; and field screening.

- Geological Investigations (Soils and Sediments)

  The Respondent shall conduct geological investigations to determine the extent of hazardous substances, pollutants or contaminants in surface and subsurface soils and sediments at the Site, which may include, but not be limited to: surface and subsurface soil samples and borings, porosity and permeability sampling, soil gas surveys, test pits, and sediment sampling.

- Air Investigations

  The Respondent shall conduct air investigations to determine the extent of atmospheric hazardous substances, pollutants or contaminants at and from the Site, which may include but not be limited to, collection of air samples, establishment of air monitoring stations, and preparation of wind roses.

- Hydrogeological Investigations (Groundwater)

  The Respondent shall conduct hydrogeological investigations of groundwater to determine the horizontal and vertical distribution of hazardous substances, pollutants or contaminants in the groundwater and the extent, fate and transport of any groundwater plumes containing hazardous substances, pollutants or contaminants. The hydrogeological investigation may include but not be limited to: installation of well systems; collection of samples from upgradient, downgradient, private, and municipal wells; collection of samples during drilling (e.g., HydroPunch or equivalent); studies to ascertain the hydrologic

relationship between Lake Superior / Chequamegon Bay and the groundwater at the Site; hydraulic testing (e.g., pump tests, slug tests, grain size analyses, porosity, and permeability tests); piezometric testing (groundwater elevation) and the determination of regional and local groundwater flow; groundwater flow modeling; contaminant fate and transport modeling; and identification of local uses of groundwater including the number, location, depth and use of nearby private and municipal wells.

- Hydrogeological Investigations (Surface Water and Sediment)

  The Respondent shall conduct hydrogeological investigations to determine the nature and extent of contamination of surface water and sediment from the Site. The hydrogeological investigation may include, but not be limited to: collection of surface water and sediment samples; performance of tidal or other hydrological studies; and surface water elevation measurements.

- Waste Investigation

  All on-site solid waste, including hazardous waste, will likely be either investigation-derived waste or impacted media (e.g., contaminated soil, sediment, groundwater, and surface water). Therefore, it is expected that the waste investigation will only need to include characterization of the impacted media at the Site. If any other waste is found to remain on-Site, or any buildings or structures remain on-Site that may contain or be contaminated with solid waste, including hazardous waste, or hazardous substances, the Respondent shall also characterize such waste. The Respondent's work may include, but not be limited to: sampling of gases, liquids, and solids; and disposal of investigation-derived waste.

  The Respondents shall characterize and dispose of investigation-derived wastes in accordance with local, state, and federal regulations (see the Fact Sheet, *Guide to Management of Investigation-Derived Wastes*, 9345.3-03FS (January 1992)).

- Geophysical Investigation

  The Respondent may conduct geophysical investigations to delineate depths, thicknesses and volume of impacted media; the elevations of the underlying natural soil layer; and the extent of cover over fill areas. A geophysical investigation may include, but not be limited to: magnetometers surveys; electromagnetic surveys; ground-penetrating radar; seismic refraction; resistivity; meteorology; cone penetrometer survey; remote sensing; radiological investigations; test pits; trenches; and soil borings.

- Ecological Investigation

  The Respondent shall conduct ecological investigations to assess the impact to aquatic and terrestrial ecosystems from the disposal, release and/or migration of hazardous substances, pollutants or contaminants at the Site which may include, but not be limited to: wetland and habitat delineation; wildlife observations; community characterization; identification of endangered species; biota sampling; and population studies.

- Treatability Studies

  If the Respondent or EPA identifies remedial actions that involve treatment, the Respondent shall include treatability studies as outlined in Task 6 of this SOW unless the Respondent satisfactorily demonstrates to EPA that such studies are not needed. When treatability studies are needed, the Respondent shall plan initial treatability testing activities (such as research and study design) to occur concurrently with Site characterization activities.

iv. Quality Assurance Project Plan (QAPP)

- The Respondent shall prepare a QAPP that is Site-specific and covers sample analysis and data handling for samples collected during the RI, based on the Administrative Order on Consent and guidance provided by EPA.

- The Respondent shall prepare the QAPP in accordance with "EPA Requirements of Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998).

- The Respondent shall demonstrate in advance, to EPA's satisfaction, that each laboratory it may use is qualified to conduct the proposed work. This includes use of methods and analytical protocols for the chemicals of concern in the media sampled within detection and quantification limits consistent with both QA/QC procedures and data quality objectives (DQO) approved in the QAPP for the Site by EPA. The laboratory must have and follow an approved QA program. If a laboratory not in the Contract Laboratory Program (CLP) is selected, methods consistent with CLP methods that would be used at this Site for the purposes proposed and QA/QC procedures approved by EPA shall be used. The Respondent shall only use laboratories which have a documented Quality Assurance Program which complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental

Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01-002, March 2001) or equivalent documentation as determined by EPA.

- The Respondent shall participate in a pre-QAPP meeting or conference call with EPA, if either party deems it necessary. The purpose of this meeting or conference call is to discuss QAPP requirements and obtain any clarification needed to prepare the QAPP.

v. Health and Safety Plan

- The Respondent shall prepare a Health and Safety Plan that conforms to its health and safety program and complies with the Occupational Safety and Health Administration (OSHA) regulations and protocols outlined in Title 29 of the Code of Federal Regulations (CFR), Part 1910.

- The Health and Safety Plan shall include the eleven (11) elements described in the RI/FS Guidance such as a health and safety risk analysis, a description of monitoring and personal protective equipment, medical monitoring, and Site control.

- EPA does not "approve" the Respondent's Health and Safety Plan, but rather EPA reviews it to ensure that all the necessary elements are included, and that the plan provides for the protection of human health and the environment, and after that review provides comments as may be necessary and appropriate.

- The safety plan must, at a minimum, follow the EPA's guidance document *Standard Operating Safety Guides* (Publication 9285.1-03, PB92-963414, June 1992).

TASK 2: COMMUNITY RELATIONS SUPPORT

- EPA and WDNR have the responsibility of developing and implementing community relations activities for the Site. The critical community relations planning steps performed by EPA and WDNR include conducting community interviews and developing a Community Relations Plan.

- Although implementing the Community Relations Plan is the responsibility of EPA and WDNR, the Respondent, if directed by EPA, shall assist by providing information regarding the Site's history; participating in public meetings; assisting in preparing fact sheets for distribution to the general public; or conducting other activities approved by EPA.

- All PRP-conducted community relations activities, conducted pursuant to the EPA and WDNR Community Relations Plan, shall be planned and developed in coordination with EPA and WDNR.

TASK 3: SITE CHARACTERIZATION

(A) Investigate and Define Site Physical and Biological Characteristics

i. The Respondent shall collect data on the physical and biological characteristics of the Site and its surrounding areas including the physical physiography, geology, and hydrology, and specific physical characteristics identified in the work plan. This information will be ascertained through a combination of physical measurements, observations, and sampling efforts and will be utilized to define potential transport pathways and human and ecological receptor populations.

ii. In defining the Site's physical characteristics and in the event existing data proves insufficient for an engineering evaluation, the Respondent will also obtain sufficient engineering data (such as pumping characteristics) for the projection of contaminant fate and transport, and development and screening of remedial action alternatives, including information to assess treatment technologies.

(B) Define Sources of Contamination

i. The Respondent shall characterize the media on the Site for sources of contamination. For the Site, Respondent shall determine the areal extent and depth of contamination by sampling at incremental depths on a sampling grid or otherwise defined in the approved Work Plan.

ii. The Respondent shall determine the physical characteristics and chemical constituents and their concentrations for all known and discovered sources of contamination at the Site.

iii. The Respondent shall conduct sufficient sampling to define the boundaries of the contaminant sources to the level established in the QAPP and DQOs.

iv. Defining the source of contamination will include analyzing the potential for contaminant release (e.g., long term leaching from soil), contaminant mobility and persistence, and characteristics important for evaluating remedial actions, including information to assess appropriate treatment technologies.

(C) Describe the Nature and Extent/Fate and Transport of Contamination

The Respondent shall gather information to describe the nature and extent of contamination as a final step during the field investigation. To describe the nature and extent of contamination, the Respondent will utilize the information on the Site's physical and biological characteristics and sources of contamination to give a preliminary estimate of the contaminants that may have migrated. The Respondent will then implement an iterative monitoring program and any study program identified in the work plan or sampling plan such

that by using analytical techniques sufficient to detect and quantify the concentration of contaminants, the migration of contaminants through the various media at the Site can be determined. In addition, the Respondent shall gather data for calculations of contaminant fate and transport. This process is continued until the area and depth of contamination are known to the level of contamination established in the QAPP and DQOs. The Respondent will build upon existing Site-specific data as well as data generated by this RI/FS.

(D) Evaluate Site characteristics

The Respondent shall analyze and evaluate the data to describe: (1) Site physical and biological characteristics, (2) contaminant source characteristics, (3) nature and extent of contamination and (4) contaminant fate and transport. Results of the Site physical characteristics, source characteristics, and extent of contamination analyses are utilized in the analysis of contaminant fate and transport. The Respondent shall evaluate the actual and potential magnitude of releases from the sources, and horizontal and vertical spread of contamination as well as mobility and persistence of contaminants. Where modeling is appropriate, such models shall be identified to EPA in a technical memorandum prior to their use. All data and programming, including any proprietary programs, shall be made available to EPA together with a sensitivity analysis. The RI data shall be presented electronically according to U.S. EPA Region 5 format requirements. Analysis of data collected for Site characterization will meet the DQOs developed in the QAPP stated in the SAP (or revised during the RI).

(E) Risk Assessment

i. Previous Risk Assessment work conducted pursuant to WDNR's program shall be reviewed and summarized as a first step in the baseline risk assessment.

ii. The Respondent shall conduct a baseline risk assessment to determine whether Site contaminants pose a current or potential risk to human health and the environment in the absence of any remedial action. The Respondent shall address the contaminant identification, exposure assessment, toxicity assessment, and risk characterization.

iii. Respondent shall conduct a baseline human health risk assessment that focuses on actual and potential risks to persons coming into contact with on-Site hazardous substances, pollutants or contaminants as well as risks to the nearby residential, recreational and industrial worker populations from exposure to hazardous substances, pollutants or contaminants in groundwater, soils, sediments, surface water, air, and ingestion of contaminated organisms in nearby, impacted ecosystems. The human health risk assessment shall define central tendency and reasonable maximum estimates of exposure for current land use conditions and reasonable future land use conditions

iv. The human health risk assessment shall use data from the Site and nearby areas to identify the contaminants of concern (COC), provide an estimate of how and to what extent human receptors might be exposed to these COCs, and provide an assessment of the health effects associated with these COCs. The human health risk assessment shall project the potential

risk of health problems occurring if no cleanup action is taken at the Site and/or nearby areas, and establish target action levels for COCs (carcinogenic and non-carcinogenic).

v. The Respondent shall conduct the human health risk assessment in accordance with EPA guidance including, at a minimum: "Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part A)," Interim Final (EPA-540-1-89-002)," OSWER Directive 9285.7-01A; December 1, 1989; and "Risk Assessment Guidance for Superfund (RAGS), Volume I - Human Health Evaluation Manual (Part D, Standardized Planning, Reporting, and Review of Superfund Risk Assessments)," Interim, (EPA 540-R-97-033), OSWER 9285.7-01D, January, 1998. Additional relevant guidance may be found in Exhibit A of this SOW. Additional applicable or relevant guidance may be used only if approved by EPA's RPM.

vi. The Respondent shall prepare the Human Health Risk Assessment according to the guidelines outlined below:

- Hazard Identification (sources)
  The Respondent shall review available information on the hazardous substances present at the Site and identify the major contaminants of concern.

- Dose-Response Assessment
  Contaminants of concern should be selected based on their intrinsic toxicological properties.

- Conceptual Exposure/Pathway Analysis
  Critical exposure pathways (e.g., drinking water) shall be identified and analyzed. The proximity of contaminants to exposure pathways and their potential to migrate into critical exposure pathways shall be assessed.

- Characterization of Site and Potential Receptors
  The Respondent shall identify and characterize human populations in the exposure pathways.

- Exposure Assessment
  The exposure assessment will identify the magnitude of actual or potential human exposures, the frequency and duration of these exposures, and the routes by which receptors are exposed. The exposure assessment shall include an evaluation of the likelihood of such exposures occurring and shall provide the basis for the development of acceptable exposure levels. In developing the exposure assessment, The Respondent shall develop reasonable maximum estimates of exposure for both current land use conditions and potential land use conditions at the Site.

- Risk Characterization
  During risk characterization, chemical-specific toxicity information, combined with quantitative and qualitative information from the exposure assessment, shall be compared to measured levels of contaminant exposure levels and the levels predicted through environmental fate and transport modeling. These comparisons shall determine whether

concentrations of contaminants at or near the Site are effecting or could potentially effect human health.

- Identification of Limitations/Uncertainties
  The Respondent shall identify critical assumptions (e.g., background concentrations and conditions) and uncertainties in the report.

- Site Conceptual Model
  Based on contaminant identification, exposure assessment, toxicity assessment, and risk characterization, The Respondent shall develop a conceptual model of the Site.

- Final Human Health Risk Assessment Report
  After the draft Human Health Risk Assessment Report has been reviewed and commented on by EPA, The Respondent will incorporate EPA comments and submit the final Human Health Risk Assessment Report.

vii. The Respondent shall prepare the Ecological Risk Assessment according to the guidelines outlined below:

- Utilize EPA guidance including, at a minimum: "Ecological Risk Assessment Guidance for Superfund, Process for Designing and Conducting Ecological Risk Assessments, (EPA-540-R-97-006, June 1997), OSWER Directive 9285.7-25. Additional relevant guidance may be found in Exhibit A of this SOW. Additional applicable or relevant guidance may be used only if approved by EPA's RPM.

- Evaluate and assess the risk to the environment posed by Site contaminants.

viii. The Respondent shall prepare a draft Ecological Risk Assessment Report that addresses the following:

- Hazard Identification (sources)
  The Respondent shall review available information on the hazardous substances present at the Site and identify the major contaminants of concern.

- Dose-Response Assessment
  Contaminants of concern should be selected based on their intrinsic toxicological properties.

- Conceptual Exposure/Pathway Analysis
  Critical exposure pathways (e.g., surface water) shall be identified and analyzed. The proximity of contaminants to exposure pathways and their potential to migrate into critical exposure pathways shall be assessed.

- Characterization of Site and Potential Receptors
  Identify and characterize environmental exposure pathways.

- Select Chemicals, Indicator Species, and End Points
  In preparing the assessment, the Respondent will select representative chemicals, indicator species (species that are especially sensitive to environmental contaminants), and end points on which to concentrate.

- Exposure Assessment
  The exposure assessment will identify the magnitude of actual or environmental exposures, the frequency and duration of these exposures, and the routes by which receptors are exposed. The exposure assessment shall include an evaluation of the likelihood of such exposures occurring and shall provide the basis for the development of acceptable exposure levels. In developing the exposure assessment, The Respondent shall develop reasonable maximum estimates of exposure for both current land use conditions and potential land use conditions at the Site.

- Toxicity Assessment/Ecological Effects Assessment
  The toxicity and ecological effects assessment will address the types of adverse environmental effects associated with chemical exposures, the relationships between magnitude of exposures and adverse effects, and the related uncertainties for contaminant toxicity (e.g., weight of evidence for a chemical's carcinogenicity).

- Risk Characterization
  During risk characterization, chemical-specific toxicity information, combined with quantitative and qualitative information from the exposure assessment, shall be compared to measured levels of contaminant exposure levels and the levels predicted through environmental fate and transport modeling. These comparisons shall determine whether concentrations of contaminants at or near the Site are effecting or could potentially effect the environment.

- Identification of Limitations/Uncertainties
  Identify critical assumptions (e.g., background concentrations and conditions) and uncertainties in the report.

- Site Conceptual Model
  Based on contaminant identification, exposure assessment, toxicity assessment, and risk characterization, The Respondent shall develop a conceptual model of the Site.

TASK 4: REMEDIAL INVESTIGATION (RI) REPORT

(A) The Final RI/FS Planning documents will contain the schedule for submission of the RI Report, Risk Assessment Reports, Treatability Study Reports, Feasibility Study Reports, and all other deliverables (i.e., monthly progress reports) deemed appropriate by EPA. It is expected that all data collected will be analyzed and validated on a reasonable schedule and will be fast-tracked to the extent possible (depending upon the type of sample, the analytical methods, the

laboratory availability). Schedules for field work, data analysis, and data validation will be included in the project schedule, submitted with the RI/FS Work Plan.

(B) Based on that final approved schedule, the Respondent shall submit to EPA, for review and approval pursuant to Section IV, an RI Report addressing all of the Site.

(C) The RI Report shall be consistent with the AOC and this SOW.

(D) The RI Report shall accurately establish the Site characteristics such as media contaminated, extent of contamination, and the physical boundaries of the contamination. Pursuant to this objective, the Respondent shall obtain only the essential amount of detailed data necessary to determine the key contaminant(s) movement and extent of contamination source areas.

(E) The key contaminant(s) must be selected based on persistence and mobility in the environment and the degree of hazard.

(F) The key contaminant(s) identified in the RI shall be evaluated for receptor exposure and an estimate of the key contaminant(s) level reaching human or environmental receptors must be made.

(G) The Respondent shall use existing standards and guidelines such as drinking-water standards, water-quality criteria, and other criteria accepted by the EPA as appropriate for the situation may be used to evaluate effects on human receptors that may be exposed to the key contaminant(s) above appropriate standards or guidelines.

(H) The Respondent shall complete and submit an RI Report to EPA for review and approval pursuant to Section IV and it shall include the following:

1) Executive Summary

2) Site Background
The Respondent shall assemble and review available facts about the regional conditions and conditions specific to the site under investigation.

3) Investigation
a. Field Investigation & Technical Approach
b. Chemical Analysis & Analytical Methods
c. Field Methodologies
   - Biological
   - Surface Water
   - Sediment
   - Soil Boring
   - Soil Sampling
   - Monitoring Well Installation
   - Groundwater Sampling
   - Hydrogeological Assessment
   - Air Sampling

4) Site Characteristics
   - Geology
   - Hydrogeology
   - Meteorology
   - Demographics and Land Use

5) Ecological Assessment

6) Nature and Extent of Contamination
- Contaminant Sources
- Contaminant Distribution and Trends
- Fate and Transport
- Contaminant Characteristics
- Transport Processes
- Contaminant Migration Trends

7) Human Risk Assessment
- Hazard Identification (sources).
- Dose-Response Assessment.
- Prepare Conceptual Exposure/Pathway Analysis.
- Characterization of Site and Potential Receptors.
- Exposure Assessment.
- Risk Characterization.
- Identification of Limitations/Uncertainties.
- Site Conceptual Model

8) Ecological Risk Assessment
- Hazard Identification (sources).
- Dose-Response Assessment.
- Prepare Conceptual Exposure/Pathway Analysis.
- Characterization of Site and Potential Receptors.
- Select Chemicals, Indicator Species, and End Points.
- Exposure Assessment.
- Toxicity Assessment/Ecological Effects Assessment.
- Risk Characterization.
- Identification of Limitations/Uncertainties.
- Site Conceptual Model.

9) Summary and Conclusions.

TASK 5: DEVELOPMENT AND SCREENING OF ALTERNATIVES (TECHNICAL MEMORANDUM)

The Respondent shall develop and screen remedial alternatives to determine an appropriate range of waste management options that the Respondent shall evaluate. This range of alternatives shall include, as appropriate, options in which treatment is used to reduce the toxicity, mobility, or volume of wastes, but which vary in the types of treatment, the amount treated, and the manner

in which long-term residuals or untreated wastes are managed; options involving containment with little or no treatment; options involving both treatment and containment; and a no-action alternative. The Respondent shall perform the following activities as a function of the development and screening of remedial alternatives:

(A) Alternatives Development and Screening Deliverables

The Respondent shall prepare and submit three technical memoranda for this task: a Remedial Action Objectives Technical Memorandum, an Alternatives Screening Technical Memorandum and a Comparative Analysis of Alternatives Memorandum.

1. Remedial Action Objectives Technical Memorandum

The Respondent shall submit a Remedial Action Objectives Technical Memorandum to EPA and WDNR for review and EPA approval. The Respondent shall submit the Remedial Action Objectives Technical Memorandum within thirty (30) calendar days following submittal of the Draft RI Report. Based on the baseline human health and ecological risk assessments, the Respondent shall document the Site-specific remedial action objectives in the Remedial Action Objectives Technical Memorandum. The remedial action objectives shall specify the constituents of concern and the media of interest; exposure pathways and receptors; and an acceptable contaminant level or range of levels (at particular locations for each exposure route). The Respondent shall incorporate EPA's comments on the Remedial Action Objectives Technical Memorandum in the Alternatives Screening Technical Memorandum.

2. Alternatives Screening Technical Memorandum

The Respondent shall submit an Alternatives Screening Technical Memorandum to EPA and WDNR for review, and EPA approval. The Alternatives Screening Technical Memorandum shall summarize the work performed during and the results of each of the above tasks, and shall include an alternatives array summary. If required by EPA, the Respondent shall modify the alternatives array to assure that the array identifies a complete and appropriate range of viable alternatives to be considered in the detailed analysis. The Alternatives Screening Technical Memorandum shall document the methods, the rationale and the results of the alternatives screening process. The Respondent shall incorporate EPA's comments on the Alternatives Screening Technical Memorandum in the Comparative Analysis of Alternatives Technical Memorandum. The Respondent shall submit the Alternatives Screening Technical Memorandum within thirty (30) calendar days after receipt of EPA's comments on the Remedial Action Objectives Technical Memorandum.

(a) Develop General Response Actions

In the Alternatives Screening Technical Memorandum, the Respondent shall develop general response actions for each medium of interest including containment, treatment, excavation, pumping, or other actions, singly or in combination, to satisfy the EPA-approved remedial action objectives.

(b) Identify Areas or Volumes of Media

In the Alternatives Screening Technical Memorandum, the Respondent shall identify areas or volumes of media to which the general response actions may apply, taking into account requirements for protectiveness as identified in the remedial action objectives. The Respondent shall also take into account the chemical and physical characterization of the Site.

(c) Identify, Screen, and Document Remedial Technologies

In the Alternatives Screening Technical Memorandum, the Respondent shall identify and evaluate technologies applicable to each general response action to eliminate those that cannot be implemented at the Site. The Respondent shall refine applicable general response actions to specify remedial technology types. The Respondent shall identify technology process options for each of the technology types concurrently with the identification of such technology types or following the screening of considered technology types. The Respondent shall evaluate process options on the basis of effectiveness, implementability, and cost factors to select and retain one or, if necessary, more representative processes for each technology type. The Respondent shall summarize and include the technology types and process options in the Alternatives Screening Technical Memorandum. Whenever practicable, the alternatives shall also consider the CERCLA preference for treatment over conventional containment or land disposal approaches.

In the Alternatives Screening Technical Memorandum Respondents shall provide a preliminary list of alternatives to address contaminated soil, sediments, surface water, groundwater, and air contamination at the Site that shall consist of, but is not limited to, treatment technologies, removal and off-Site treatment/disposal, removal and on-Site disposal, and in-place containment for soils, sediments, and wastes. See 40 CFR 300.430(e)(1)-(7). The Respondent shall specify the reasons for eliminating any alternatives.

(d) Assemble and Document Alternatives

The Respondent shall assemble the selected representative technologies into alternatives for each affected medium or operable unit. Together, all of the alternatives shall represent a range of treatment and containment combinations that shall address either the Site or the operable unit as a whole. The Respondent shall prepare a summary of the assembled alternatives and their related action-specific ARARs for the Alternatives Screening Technical Memorandum. The Respondent shall specify the reasons for eliminating alternatives during the preliminary screening process.

(e) Refine Alternatives

The Respondent shall refine the remedial alternatives to identify the volumes of contaminated media addressed by the proposed processes and size critical unit operations as necessary. The Respondent shall collect sufficient information for an adequate comparison of alternatives. The Respondent shall also modify the remedial action objectives for each chemical in each medium as necessary to incorporate any new human health and ecological risk assessment information presented in the Respondent's baseline human health and ecological risk assessment reports. Additionally, the Respondent shall update action-specific ARARs as the remedial alternatives are refined.

3. Conduct and Document Screening Evaluation of Each Alternative

The Respondent may perform a final screening process based on short and long term aspects of effectiveness, implementability, and relative cost. Generally, this screening process is only necessary when there are many feasible alternatives available for a detailed analysis. If necessary, the Respondent shall conduct the screening of alternatives to assure that only the alternatives with the most favorable composite evaluation of all factors are retained for further analysis. As appropriate, the screening shall preserve the range of treatment and containment alternatives that was initially developed. The range of remaining alternatives shall include options that use treatment technologies and permanent solutions to the maximum extent practicable. The Respondent shall prepare an Alternatives Screening Technical Memorandum that summarizes the results and reasoning employed in screening; arrays the alternatives that remain after screening; and identifies the action-specific ARARs for the alternatives that remain after screening.

TASK 6: TREATABILITY STUDIES

(A) If EPA or the Respondent determines that treatability testing is necessary, the Respondent shall conduct treatability studies. In addition, if applicable, the Respondent shall use the testing results and operating conditions in the detailed design of the selected remedial technology.

(B) The Respondent shall perform the following activities if treatability testing is deemed necessary:

1. Determine Candidate Technologies and of the Need for Testing:
The Respondent shall submit a Candidate Technologies and Testing Needs Technical Memorandum, subject to EPA and WDNR review and EPA approval that identifies candidate technologies for a treatability studies program. The Respondent shall submit the technical memorandum as early as project planning (Task 1) and no later than at the time of submittal of the Alternative Screenings Technical Memorandum to avoid any potential delays in the FS. The list of candidate technologies shall cover the range of technologies required for alternatives analysis. The Respondent shall determine and refine the specific data requirements for the testing program during Site characterization and the development and screening of remedial alternatives.

2. Conduct Literature Survey and Determine the Need for Testing:
The Respondent shall conduct a literature survey to gather information on the performance, relative costs, applicability, removal efficiencies, operation and maintenance (O&M) requirements, and implementability of candidate technologies. If the Respondent has not sufficiently demonstrated practical candidate technologies, or if such technologies cannot be adequately evaluated for this Site on the basis of the available information, the Respondent shall conduct treatability testing. If EPA determines that treatability testing is necessary, and the Respondent cannot demonstrate to EPA's satisfaction that such testing is unnecessary, then the Respondent shall submit a statement of work to EPA and WDNR that outlines the steps and the data necessary to evaluate and initiate the treatability testing program within thirty (30) days of a request by the EPA.

3. Evaluate Treatability Studies
Once a decision has been made to perform treatability studies, EPA will decide on the type of treatability testing to use (e.g., bench versus pilot). Because of the time required to design, fabricate, and install pilot scale equipment as well as perform testing for various operating conditions, the decision to perform pilot testing will be made as early in the process as possible to minimize potential delays of the FS. To assure that a treatability testing program is completed on time, and with accurate results, within thirty (30) days of a request by EPA, the Respondent shall either submit a separate Treatability Testing Work Plan and SAP, or amendments to the original RI/FS Work Plan, FSP, QAPP for EPA and WDNR review and EPA approval.

4. Treatability Testing and Deliverables

i. Treatability Testing Work Plan and Sampling and Analysis Plan (SAP)

Within thirty (30) days of EPA's request, the Respondent shall prepare a Treatability Testing Work Plan and a SAP, or amendments to the original RI/FS Work Plan, FSP and QAPP, for EPA and WDNR review and EPA approval that describes the Site background, the remedial technology or technologies to be tested, test objectives, experimental procedures, treatability conditions to be tested, measurements of performance, analytical methods, data management and analysis, health and safety, and residual waste management. The Respondent shall document the data quality objectives (DQOs) for treatability testing as well. If pilot scale treatability testing is to be performed, the Treatability Study Work Plan shall describe pilot plant installation and start-up, pilot plant operation and maintenance procedures, operating conditions to be tested, a sampling plan to determine pilot plant performance, and a detailed health and safety plan. If testing is to be performed off-Site, the plans shall address all permitting requirements.

ii. Treatability Study Health and Safety Plan

If the original Health and Safety Plan is not adequate for defining the activities to be performed during the treatability tests, the Respondent shall submit a separate or

amended Health and Safety Plan. EPA and WDNR will review, but do not "approve" the Treatability Study Health and Safety Plan.

iii. Treatability Study Evaluation Report

Following the completion of the treatability testing, the Respondent shall analyze and interpret the testing results in a technical report to EPA and WDNR. The Respondent shall submit the treatability study report according to the schedule in the Treatability Study Work Plan. This report may be a part of the RI Report or submitted as a separate deliverable. The Treatability Study Evaluation Report shall evaluate each technology's effectiveness, implementability and cost, and actual results as compared with predicted results. The report shall also evaluate full scale application of the technology, including a sensitivity analysis identifying the key parameters affecting full-scale operation.

TASK 7: DETAILED ANALYSIS OF ALTERNATIVES (FS REPORT)

The Respondent shall conduct and present a detailed analysis of remedial alternatives to provide EPA with the information needed to select a Site remedy.

(A) Detailed Analysis of Alternatives

The Respondent shall conduct a detailed analysis of the remedial alternatives for the Site. The detailed analysis shall include an analysis of each remedial option against a set of nine evaluation criteria, and a comparative analysis of all options using the same nine criteria as a basis for comparison.

1. Apply Nine Criteria and Document Analysis

The Respondent shall apply the nine evaluation criteria to the assembled remedial alternatives to ensure that the selected remedial alternative will protect human health and the environment and meet remedial action objectives; will comply with, or include a waiver of, ARARs; will be cost-effective; will utilize permanent solutions and alternative treatment technologies, or resource recovery technologies, to the maximum extent practicable; and will address the statutory preference for treatment as a principal element. The evaluation criteria include: (1) overall protection of human health and the environment and how the alternative meets each of the remedial action objectives; (2) compliance with ARARs; (3) long-term effectiveness and permanence; (4) reduction of toxicity, mobility, or volume; (5) short-term effectiveness; (6) implementability; (7) cost; (8) state (or support agency) acceptance; and (9) community acceptance. (Note: criteria 8 and 9 are considered after the RI/FS report has been released to the general public.) For each alternative the Respondent shall provide: (1) A description of the alternative that outlines the waste management strategy involved and identifies the key ARARs associated with each alternative, and (2) A discussion of the individual criterion assessment. If the Respondent does not have direct input on criteria (8) state (or support agency) acceptance and (9) community acceptance, EPA will address these criteria.

2. Compare Alternatives Against Each Other and Document the Comparison of Alternatives

The Respondent shall perform a comparative analysis between the remedial alternatives. That is, the Respondent shall compare each alternative against the other alternatives using the evaluation criteria as a basis of comparison. EPA will identify and select the preferred alternative. The Respondent shall prepare a Comparative Analysis of Alternatives Technical Memorandum which summarizes the results of the comparative analysis and fully and satisfactorily addresses and incorporates EPA's comments on the Alternatives Screening Technical Memorandum. The Respondent shall incorporate EPA's comments on the Comparative Analysis of Alternatives Technical Memorandum in the draft FS Report. The Respondent shall submit the Comparative Analysis of Alternatives Memorandum within thirty (30) calendar days after receipt of EPA's comments on the Alternatives Screening Technical Memorandum.

(B) Feasibility Study Report

Within forty-five (45) days after receipt of EPA's comments on the Comparative Analysis of Alternatives Technical Memorandum, the Respondent shall prepare and submit a draft FS Report to WDNR and EPA for review pursuant to Section IV. The FS report shall summarize the development and screening of the remedial alternatives and present the detailed analysis of remedial alternatives. In addition, the FS Report shall also include the information EPA will need to prepare relevant sections of the Record of Decision (ROD) for the Site [see Chapters 6 and 9 of U.S. EPA's *A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (EPA 540-R-98-031, July 1999) for the information that is needed].

TASK 8: PROGRESS REPORTS

The Respondent shall submit monthly written progress reports to EPA and WDNR concerning actions undertaken pursuant to the AOC and this SOW, beginning thirty (30) calendar days after the Effective Date of the AOC, until the termination of the AOC, unless otherwise directed in writing by the RPM. These reports shall include, but not be limited to, a description of all significant developments during the preceding period, including the specific work that was performed and any problems that were encountered; a summary of the analytical data that was received during the reporting period [refer to electronic data submission requirements in Section III, paragraph 3]; and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and actual or planned resolutions of past or anticipated problems. The monthly progress reports will summarize the field activities conducted each month including, but not limited to drilling and sample locations, depths and descriptions; boring logs; sample collection logs; field notes; problems encountered; solutions to problems; a description of any modifications to the procedures outlined in the RI/FS Work Plan, the FSP, QAPP or Health and Safety Plan, with justifications for the modifications; and upcoming field activities.

EXHIBIT A
PARTIAL LIST OF GUIDANCE

EXHIBIT A
PARTIAL LIST OF GUIDANCE

The following list, although not comprehensive, comprises many of the regulations and guidance documents that apply to the RI/FS process. The majority of these guidance documents, and additional applicable guidance documents, may be downloaded from the following websites:

http://www.epa.gov/superfund/pubs.htm (General Superfund)
http://cluin.org (Site Characterization, Monitoring and Remediation)
http://www.epa.gov/ORD/NRMRL/Pubs (Site Characterization and Monitoring)
http://www.epa.gov/quality/qa_docs.html#guidance (Quality Assurance)
http://www.epa.gov/superfund/programs/risk/toolthh.htm (Risk Assessment - Human)
http://www.epa.gov/superfund/programs/risk/tooleco.htm (Ecological Risk Assessment)
http://www.epa.gov/superfund/programs/lead (Risk Assessment - Lead)
http://cfpub.epa.gov/ncea (Risk Assessment - Exposure Factors/Other)
http://www.epa.gov/nepis/srch.htm (General Publications Clearinghouse)
http://www.epa.gov/clariton/clhtml/pubtitle.html (General Publications Clearinghouse)

(1) The (revised) National Contingency Plan;

(2) *Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA*, U.S. EPA, Office of Emergency and Remedial Response, OSWER Directive No. 9355.3-01, EPA/540/G-89/004, October 1988.

(3) *Conducting Remedial Investigations/Feasibility Studies for CERCLA Municipal Landfill Sites*, U.S. EPA, Office of Emergency and Remedial Response, EPA/540/P-91/001, February 1991.

(4) *Implementing Presumptive Remedies*, U.S. EPA, Office of Emergency and Remedial Response, EPA-540-R-97-029, October 1997.

(5) *Presumptive Remedy for CERCLA Municipal Landfill Sites*, U.S. EPA, OSWER Directive No. 9355.0-49FS, EPA-540-F-93-035, September 1993.

(6) *Presumptive Remedies: CERCLA Landfill Caps RI/FS Data Collection Guide*, U.S. EPA, OSWER 9355.3-18FS, EPA/540/F-95/009, August 1995.

(7) *Presumptive Response Strategy and Ex-Situ Treatment Technologies for Contaminated Ground Water at CERCLA Sites*, OSWER 9283.1-12, EPA-540-R-96-023, October 1996.

(8) *Field Analytical and Site Characterization Technologies Summary of Applications*, U.S. EPA, EPA-542-F-97-024, November 1997.

(9) *CLU-IN Hazardous Waste Clean-Up Information World Wide Web Site*, U.S. EPA, EPA-542-F-99-002, February 1999.

(10) *Field Sampling and Analysis Technology Matrix and Reference Guide*, U.S. EPA, EPA-542-F-98-013, July 1998.

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APPENDIX B

SITE MAP

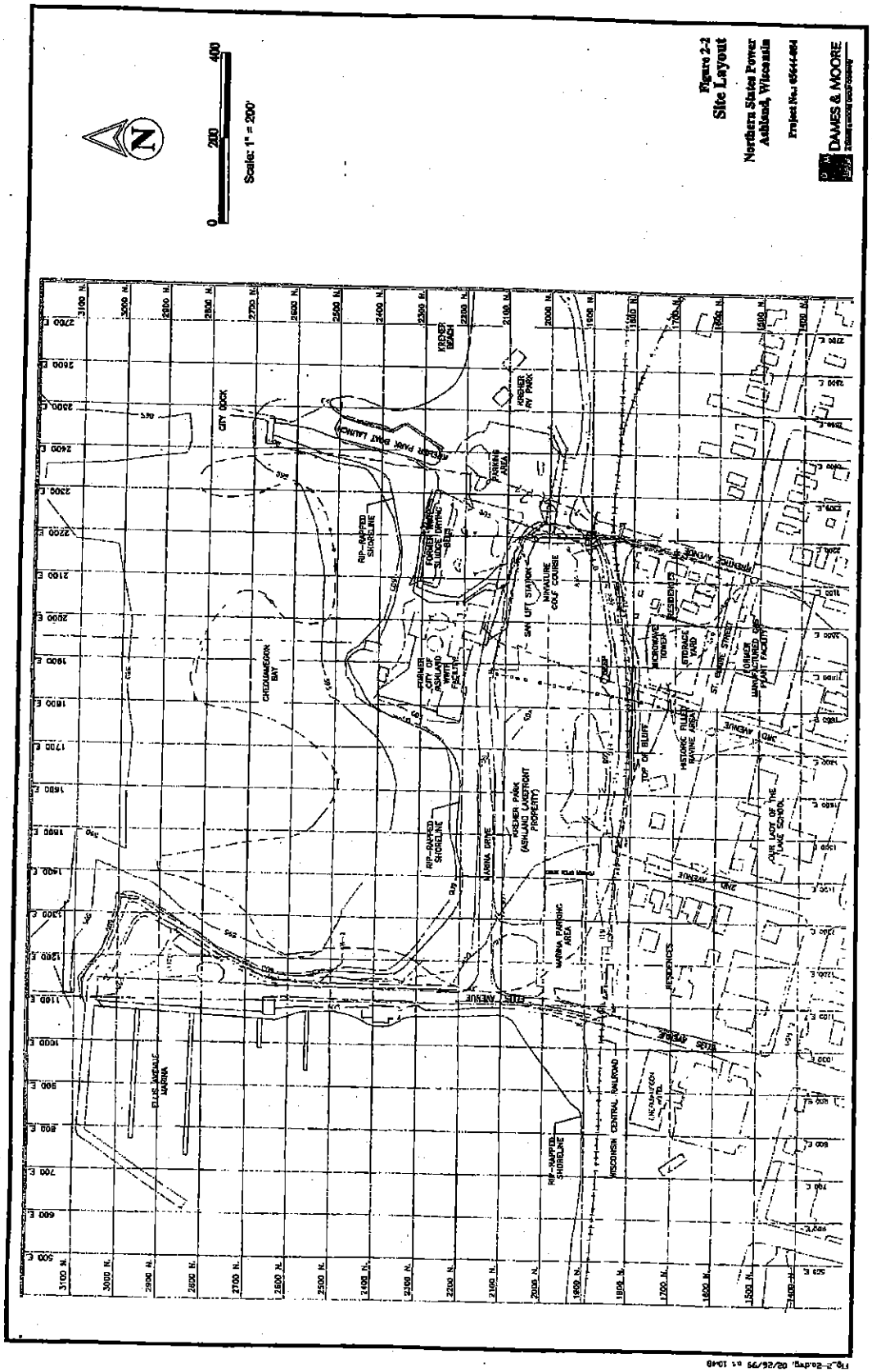
Figure 2-2
Site Layout
Northern States Power
Ashland, Wisconsin
Project No.: 05444-004
DAMES & MOORE
Scale: 1" = 200'
0
200
400
N
CITY DOCK
CHEQUAMEGON BAY
RIP-RAPPED SHORELINE
MARINA DRIVE
KOSCHER PARK (ASHLAND LAKEFRONT PROPERTY)
MARINA PARKING AREA
ELLIS AVENUE MARINA
WISCONSIN CENTRAL RAILROAD
MINIATURE GOLF COURSE
SW LIFT STATION
TOP OF BLUFF
HISTORIC FILLER MARINE AREA
RESIDENCES
ASHLAND
2ND AVENUE
ST. CLAIR STREET

Exhibit 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and THE STATE OF WISCONSIN,	:	
Plaintiffs,	:	Civil Action No.
v.	:	
NORTHERN STATES POWER COMPANY,	:	
Defendant.	:	

COMPLAINT

The United States of America ("the United States"), by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency, the United States Department of Commerce (acting through the National Oceanic and Atmospheric Administration), and the United States Department of the Interior (acting through the United States Fish and Wildlife Service); and the State of Wisconsin (the "State"), by authority of the Attorney General of Wisconsin and through the undersigned attorneys, acting at the request of the Governor of Wisconsin and on behalf of the Secretary of the Wisconsin Department of Natural Resources pursuant to Wis. Stat. § 165.25, file this complaint and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action brought against Defendant Northern States Power Company, a Wisconsin Corporation ("Defendant") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986

("CERCLA"). The United States and the State seek to recover certain unreimbursed costs incurred for response activities undertaken in response to the release and threatened release of hazardous substances from facilities at and near the Ashland/Northern States Power Lakefront Superfund Site in northwestern Wisconsin (hereinafter the "Site"). More specifically, the United States and the State seek to recover response costs associated with response activities relating to the uplands portion of the Site, including the Upper Bluff, Kreher Park, the filled ravine, and the Copper Falls aquifer (hereinafter the "Phase 1 Project Area"). The United States also seeks injunctive relief requiring that Defendant perform the selected remedy for the Phase 1 Project Area. The United States and the State also seek a judgment on liability for Phase 1 Project Area response costs that will be binding on any subsequent action or actions to recover further Phase 1 Project Area response costs pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2). Finally, the United States and the State seek recovery of damages for injury to, loss of, or destruction of natural resources as a result of releases and threatened releases of hazardous substances into the environment at or from the Site, including the recovery of unreimbursed costs of assessing such damages, pursuant to CERCLA Section 107(a)(4)(C), 42 U.S.C. §§ 9607(a)(4)(C).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the parties hereto, pursuant to CERCLA Section 113(b) and 113(e), 42 U.S.C. §§ 9613(b) and 9613(e), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c) because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

GENERAL ALLEGATIONS

4. Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant is the current owner and operator of a portion of the Site and a portion of the Phase 1 Project Area. Defendant is the successor in liability to the former owner and operator of a manufactured gas plant that operated on a portion of the Site for several decades. The manufactured gas plant was a source of hazardous substances that contaminated the Site.

6. Defendant is (i) a person (or a successor to a person) who is the current owner and/or operator of a facility from which there were releases of hazardous substances, or threatened releases of hazardous substances, which caused the incurrence of response costs, within the meaning of CERCLA Section 107(a)(1), 42 U.S.C. § 9607(a)(1); and (ii) a person (or a successor to a person) who at the time of disposal of a hazardous substance owned and/or operated a facility at which such hazardous substances were disposed and from which there were releases of hazardous substances, or threatened releases of hazardous substances, which caused the incurrence of response costs, within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

7. The property owned and/or operated by Defendant is a "facility," within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

8. The Site is a "facility" and the Phase 1 Project Area is a "facility," within the meaning of CERCLA Sections 101(9) and 107(a), 42 U.S.C. §§ 9601(9) and 9607(a).

9. At times relevant to this action, there have been "releases" and "threatened releases" of "hazardous substances" from the property owned and/or operated by Defendant and into the environment at and from the Phase 1 Project Area, within the meaning of CERCLA

Sections 101(14), 101(22), and 107(a), 42 U.S.C. §§ 9601(14), 9601(22) and 9607(a). More specifically, there have been "releases" and "threatened releases" of, among other hazardous substances, volatile organic compounds, such as benzene, and semivolatile organic compounds such as naphthalene which are "hazardous substances," within the meaning of CERCLA Sections 101(14) and 107(a), 42 U.S.C. §§ 9601(14) and 9607(a).

10. The United States and the State have incurred "response costs" relating to the Phase 1 Project Area – within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25) – in responding to releases and threatened releases of hazardous substances from the property owned and/or operated by Defendant, and in responding to releases and threatened releases of hazardous substances into the environment at and from the Phase 1 Project Area. The response costs incurred by the United States and the State include costs of performing and/or overseeing the ongoing Phase 1 Project Area remedial design work.

11. The above-described response costs relating to the Phase 1 Project Area were incurred by the United States and the State in a manner not inconsistent with the National Contingency Plan, which was promulgated under CERCLA Section 105(a), 42 U.S.C. § 9605(a), and codified at 40 C.F.R. Part 300.

12. "Natural Resources" within the meaning of CERCLA Section 101(16), 42 U.S.C. § 9601(16), have been and/or are being injured, lost, or destroyed as a result of the releases of hazardous substances from the Site.

13. EPA signed a Record of Decision ("ROD") on September 30, 2010 setting forth EPA's selected remedy for the Site.

FIRST CLAIM FOR RELIEF
(Cost Recovery by the United States Under CERCLA Section 107, 42 U.S.C. § 9607)

14. Paragraphs 1-13 are realleged and incorporated herein by reference.

15. Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), Defendant is liable to the United States for the following response costs incurred and to be incurred by the United States related to the Phase 1 Project Area, as well as enforcement costs and prejudgment interest on such costs: (i) all costs of performing and/or overseeing the ongoing Phase 1 Project Area remedial design work; and (ii) all future costs of any response actions that may be performed for the Phase 1 Project Area.

SECOND CLAIM FOR RELIEF
(Cost Recovery by the State Under CERCLA Section 107, 42 U.S.C. § 9607)

16. Paragraphs 1-13 are realleged and incorporated herein by reference.

17. Pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a), Defendant is liable to the State for the following response costs incurred and to be incurred by the State for the Phase 1 Project Area, as well as enforcement costs and prejudgment interest on such costs: (i) all costs of performing and/or overseeing the ongoing Phase 1 Project Area remedial design work; and (ii) all future costs of any response actions that may be performed for the Phase 1 Project Area.

THIRD CLAIM FOR RELIEF
(Injunctive Relief Under CERCLA Section 106, 42 U.S.C. § 9606)

18. Paragraphs 1-13 are realleged and incorporated herein by reference.

19. The United States Environmental Protection Agency has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from the Phase 1 Project Area.

20. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), Defendant is subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from the Phase 1 Project Area.

FOURTH CLAIM FOR RELIEF
(Recovery of Natural Resource Damages under CERCLA Section 107, 42 U.S.C. § 9607)

21. Paragraphs 1-13 are realleged and incorporated herein by reference.

22. Pursuant to Section CERCLA Section 107(a)(4)(C), 42 U.S.C. § 9607(a)(4)(C), Defendant is liable to the United States and the State for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from a release of hazardous substances at or from the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America and the State of Wisconsin, respectfully request that this Court:

1. Enter judgment in favor of the United States and against the above-named Defendant for response costs incurred by the United States, including prejudgment interest, in connection with the above-described response actions relating to the Phase 1 Project Area;

2. Enter judgment in favor of the State and against the above-named Defendant for response costs incurred by the State, including prejudgment interest, in connection with the above-described response actions relating to the Phase 1 Project Area;

3. Order the above-named Defendant to abate the conditions at the Phase 1 Project Area that may present an imminent and substantial endangerment to the public health or welfare or the environment;

4. Enter judgment in favor of the United States and the State for all damages for

injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, at or from the Site;

5. Enter a declaratory judgment of liability against Defendant pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that will be binding on any subsequent action or actions to recover further response costs for the Phase 1 Project Area;

6. Award the United States and the State their costs of this action; and

7. Grant such other and further relief as the Court deems just and proper.

For the United States of America

Date: 7/20/12

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date: 7/30/12

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Wisconsin Department of Justice
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(608) 266-3861

CERTIFICATE OF SERVICE

Pursuant to Paragraph 121 of the Consent Decree lodged with the Court on this date, I hereby certify that copies of the foregoing Complaint were served on this date by email or by first-class mail, postage prepaid, upon the following individuals:

Defendant NSPW	*Jerry Winslow* Xcel Energy Services, Inc., on behalf of NSPW 414 Nicollet Mall, MP7 Minneapolis, MN 55401	*Kristen Shults Carney* Assistant General Counsel Xcel Energy Services, Inc., on behalf of NSPW 1800 Larimer 11th Floor Denver, CO 80202	*Karl Karg* *Kelly Richardson* Latham & Watkins *David Crass* Michael Best
State of Wisconsin	*Attorney Kristin A. Hess* Bureau of Legal Services Wisconsin DNR P.O. Box 7921 101 S. Webster Street Madison, WI 53707-7921	*Jamie Dunn* WDNR Project Manager 810 West Maple Street Spooner, WI 54801	
Bad River Tribe	*Mike Wiggins Jr.* Tribal Chairman 72682 Maple Street/PO Box 39 Odanah, WI 54861	*Ervin Soulier* *Cyrus Hester* 72682 Maple Street/PO Box 39 Odanah, WI 54861	
Red Cliff Tribe	*Tribal Chairperson* Red Cliff Band of Lake Superior Chippewa Indians 88385 Pike Road Bayfield, Wisconsin 54814	*Tribal Attorney* Red Cliff Legal Department 88385 Pike Road Bayfield, Wisconsin 54814	

Exhibit 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA and THE STATE OF WISCONSIN,	:	
Plaintiffs,	:	
v.	:	Civil Action No. _____
NORTHERN STATES POWER COMPANY,	:	
Defendant.	:	

CONSENT DECREE BETWEEN THE UNITED STATES, WISCONSIN, NORTHERN STATES POWER COMPANY, AND THE BAD RIVER AND RED CLIFF BANDS OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS

TABLE OF CONTENTS

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the Secretaries of the United States Department of the Interior ("DOI") and the United States Department of Commerce ("DOC"), and the State of Wisconsin (the "State"), at the request of the Governor of Wisconsin on behalf of the Wisconsin Department of Natural Resources ("WDNR"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States and the State in their complaint seek, *inter alia*: (1) reimbursement of costs incurred by EPA and the U.S. Department of Justice ("DOJ") for response actions at the Ashland/Northern States Power Lakefront Site ("Site") in Ashland, Wisconsin, together with accrued interest; (2) performance of response actions by Northern States Power Company, a Wisconsin Corporation ("Settling Defendant") at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) recovery of Natural Resource Damages.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action for the Site, and the State has participated in such negotiations and elected to be a party to this Consent Decree.

D. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. Part 300, the President has delegated authority to act as Federal Trustees for Natural Resources at and near the Site to DOI, as represented by the United States Fish and Wildlife Service, and DOC, as represented by the National Oceanic and Atmospheric Administration.

E. WDNR is a response agency and a State Trustee for Natural Resources at or near the Site.

F. The Bad River and Red Cliff Bands of the Lake Superior Tribe of Chippewa Indians (the "Tribes") are trustees for Natural Resources at or near the Site.

G. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, WDNR, and the Tribes (collectively "Trustees") on March 28, 2011 of negotiations with PRPs regarding the release of hazardous substances that is alleged to have resulted in injury to Natural Resources under federal, State, and Tribal trusteeship and encouraged the Trustees to participate in the negotiation of this Consent Decree. The Trustees have participated in the negotiation of this Consent Decree with respect to Natural Resource Damages and support this Consent Decree.

H. The Settling Defendant does not admit any liability to Plaintiffs or the Tribes arising out of the transactions or occurrences alleged in the complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, nor any damage to Natural Resources. Settling Defendant does not admit, and reserves the right to controvert in subsequent proceedings, except as otherwise provided herein, the validity of any findings of fact, conclusions of law, or other determinations of this Consent Decree.

I. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 5, 2002, 67 Fed. Reg. 56757-56765.

J. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA and Settling Defendant commenced on November 14, 2003, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430 under an Administrative Order on Consent ("AOC").

K. Settling Defendant completed a Remedial Investigation ("RI") Report on February 5, 2008, and completed a Feasibility Study ("FS") Report on December 4, 2008. EPA issued a Notice of Completion for the AOC on December 13, 2010.

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 1, 2009, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Director of the Superfund Division, EPA Region 5, based the selection of the response action.

M. Pursuant to Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA sent special notice letters to Settling Defendant, Wisconsin Central Ltd., Soo Line Railroad Co., and the City of Ashland, Wisconsin notifying them of their potential liability for the Site, and inviting them to participate in negotiations regarding cleanup of the Site. Wisconsin Central Ltd., Soo Line Railroad Co., and the City of Ashland are not parties to this Consent Decree, and have not otherwise resolved their respective liability at the Site, as of the Effective Date of this Consent Decree. The John Schroeder Lumber Company operated on the Site from approximately 1901 until sometime in the 1930s and is now defunct. Schroeder Lumber might be a potentially responsible party at the Site if still in existence.

N. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2010, on which the State has given its concurrence. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

O. The Site includes four inter-related areas of concern: 1) sediments in Chequamegon Bay; 2) soil and shallow groundwater in Kreher Park; 3) soil and shallow groundwater in the Upper Bluff/Filled Ravine; and 4) deep groundwater in the Copper Falls Aquifer. The remedial design and remedial action to be conducted pursuant to this Consent Decree pertains only to the selected remedy specified in the ROD for the soil and groundwater portions of the Site (items 2-4, above), and not to the sediments in Chequamegon Bay (item 1, above). The Parties agree that the remedy for the sediments in Chequamegon Bay will be addressed separately, and that this Consent Decree does not limit or otherwise affect any rights or defenses Plaintiffs or Settling Defendant may have with respect to Chequamegon Bay, except as set forth in this Consent Decree, such rights and defenses being otherwise fully retained.

P. This Consent Decree also fully and finally resolves any and all Natural Resource Damages recoverable by the United States, the State, or the Tribes from Settling Defendant for

injury to, destruction of, or loss of use or impairment of Natural Resources at the entire Site, including the portion of Chequamegon Bay within the Site, except as otherwise set forth in this Consent Decree.

Q. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedial action set forth in the ROD and the Work to be performed by Settling Defendant shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, the State, the Tribes, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Settling Defendant's responsibilities under this Consent Decree, except that Settling Defendant may require third parties to accept responsibility for some or all of its obligations under the Consent Decree. Unless the United States and the State agree otherwise in a Consent Decree modification filed with the Court, Settling Defendant shall remain responsible for all obligations under the Consent Decree, notwithstanding any agreement between Settling Defendant and any third party.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing Settling Defendant with respect to the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree.

Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

a. "Ashland/Northern States Power Special Account" shall mean the special account, within the EPA Hazardous Substances Superfund, established for the Site (Site ID B5 N5) by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

c. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

d. The term "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

f. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

g. "Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Defendant's performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports, and other deliverables submitted pursuant to this Consent Decree, WDNR costs billed to EPA by agreement between WDNR and EPA, and costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Paragraph 9 (Notice to Successors-in-Title and Transfers of Real Property), Sections VII (Phase 1 Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 48 (Funding for Work Takeover), or the costs incurred by the United States in enforcing the terms

of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XXI (Dispute Resolution) and all litigation costs.

h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, in performing any aspects of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 9 (Notice to Successors-in-Title and Transfers of Real Property), Sections VII (Phase 1 Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV (Emergency Response), Paragraph 48 (Funding for Work Takeover), Section XXXI (Community Involvement), and WDNR costs billed to EPA by agreement between WDNR and EPA.

i. "Institutional Controls" or "ICs" shall mean restrictions, limitations, or other conditions or action taken under state laws or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices to ensure that conditions at the Phase 1 Project Area, and the rest of the Site to the extent described in Paragraph 26(f), remain protective of public health, safety, and welfare and the environment, including, but not limited, to WIS. STAT. § 292.12, that may also: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Phase 1 Remedial Action; (c) provide information intended to modify or guide human behavior at the Phase 1 Project Area, and the rest of the Site to the extent described in Paragraph 26(f); and/or (d) require easements or covenants running with the land that (i) limit land, water, or resource use and/or provide access rights and (ii) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office (which has commonly been referred to as "Proprietary Controls" by EPA).

j. "Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the ROD, prepared in accordance with the statement of work ("SOW").

k. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

m. "Natural Resource" or "Natural Resources" means land, resident and anadromous fish, resident and migratory wildlife, biota, air, water, groundwater, sediments, wetlands, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, the State, or the Tribes.

n. "Natural Resource Damages" means any damages recoverable by the United States or the State on behalf of the public, or by the Tribes, for injury to, destruction of, or loss or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in value, or loss of use of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state and tribal law.

o. "Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Phase 1 Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendant) and the SOW, and maintenance, monitoring, and enforcement of Institutional Controls as provided in the ICIAP.

p. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

q. "Parties" shall mean the United States, the State, the Tribes, and Settling Defendant.

r. "Phase 1 Performance Standards" shall mean the cleanup standards for soil and groundwater in the Phase 1 Remedial Action, as set forth in the ROD, the SOW, and the design plans and specifications developed in accordance with the Phase 1 Remedial Design Work Plan and the Phase 1 Remedial Action Work Plan and approved by EPA. The Phase 1 Performance Standards for soil and groundwater shall be established to achieve: (i) the Remedial Action Objectives ("RAOs") described in Section 8.0 of the ROD; (ii) cleanup standards described in Section 12.8 of the ROD, including the table of Cleanup Standards for Soil and Groundwater on page 103 of the ROD (or their equivalent as allowed under ARARs); and (iii) any ARARs identified in Appendix C of the ROD and that are identified during the Phase 1 Remedial Design.

s. "Phase 1 Project Area" shall mean that area of the Site generally comprising Kreher Park; the Upper Bluff/Filled Ravine; and the Copper Falls Aquifer. The Phase 1 Project Area comprises the entire Site except for the portion of Chequamegon Bay within the Site boundary.

t. "Phase 1 Remedial Action" shall mean all activities Settling Defendant is required to perform under the Consent Decree to implement the ROD with respect to the Phase 1 Project Area and to implement the Phase 1 Remedial Action Work Plan to be developed under Paragraph 12 and the SOW, including implementation of Institutional Controls, until the Phase 1 Performance Standards are met, and excluding performance of the Remedial Design, O&M, and the activities required under Section XXVII (Retention of Records). The Phase 1 Remedial Action includes the entire remedy required by the ROD, except that it does not include the implementation of the ROD with respect to sediments in Chequamegon Bay.

u. "Phase 1 Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 (Phase 1 Remedial Action) and approved by EPA, after

consultation with WDNR, and any modifications thereto. WDNR may join EPA in approving the Phase 1 Remedial Action Work Plan.

v. "Phase 1 Remedial Design" shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for the Phase 1 Remedial Action pursuant to the Phase 1 Remedial Design Work Plan.

w. "Phase 1 Remedial Design Work Plan" shall mean the work plan for the design of the Phase 1 Remedial Action approved by EPA, after consultation with WDNR, and any modifications made in accordance with this Consent Decree.

x. "Plaintiffs" shall mean the United States and the State.

y. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

z. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 30, 2010 by the Director of the Superfund Division, EPA Region 5, and all attachments thereto. The ROD is attached as Appendix A.

aa. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

bb. "Settling Defendant" shall mean Northern States Power Company, a Wisconsin corporation.

cc. "Settling Defendant's Related Parties" shall mean: (i) all parents, subsidiaries, and affiliates of Settling Defendant (including, but not limited to, Xcel Energy, Inc., a Minnesota corporation; Xcel Energy Services, Inc., a Delaware corporation; Northern States Power Company, a Minnesota corporation; Southwestern Public Service Company, a New Mexico corporation; and Public Service Company of Colorado, a Colorado corporation), but only to the extent that the alleged liability of such person is based on the alleged liability of the Settling Defendant; and (ii) the former or current officers, directors, employees, general partners, limited partners, members, or shareholders of Settling Defendant and of any entity included in clause (i) of this Paragraph, but only to the extent that the alleged liability of such person is based on acts and/or omissions which occurred within the scope of the person's employment or capacity as an officer, director, employee, general partner, limited partner, member, or shareholder of the Settling Defendant or of any entity included in clause (i) of this Paragraph.

dd. "Site" shall mean the Ashland/Northern States Power Lakefront Site, located in the City of Ashland, Ashland County, Wisconsin, and depicted generally on the map attached as Appendix C. The Site includes both the Phase 1 Project Area and the area of Chequamegon Bay within the Site boundary (as illustrated in Appendix C).

ee. "State" shall mean the State of Wisconsin and each department, agency, and instrumentality of the State of Wisconsin, including WDNR.

ff. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Phase 1 Remedial Design, Phase 1 Remedial Action, and O&M at the Site, as set forth in Appendix B to this Consent Decree, and any modifications made in accordance with this Consent Decree.

gg. "Supervising Contractor" shall mean the principal contractor retained by Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

hh. "Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

ii. "Tribes" shall mean the Red Cliff Band of the Lake Superior Tribe of Chippewa Indians and the Bad River Band of the Lake Superior Tribe of Chippewa Indians.

jj. "Trustees" shall mean the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, WDNR, and the Bad River and Red Cliff Bands of the Lake Superior Tribe of Chippewa Indians.

kk. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, DOI, DOC, the United States Fish and Wildlife Service, and the National Oceanic and Atmospheric Administration.

ll. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.§ 6903(27), or WIS. STAT. § 289.01(33); and (4) any "hazardous substance" under WIS. STAT. § 292.01(5).

mm. "WDNR" shall mean the Wisconsin Department of Natural Resources and its successor departments, agencies, or instrumentalities.

nn. "WDNR Database" shall mean the publically accessible database available on the internet as required by WIS. STAT. §§ 292.12, 292.31, and 292.57. The WDNR Database is accessible at http://dnr.wi.gov/org/aw/rr/brrts/index.htm

oo. "Work" shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree, except the activities required under Section XXVII (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Phase 1 Project Area by Settling Defendant, to pay certain response costs incurred by Plaintiffs with respect to the Phase 1 Project Area, to provide compensation for Natural Resources Damages at the Site, and to resolve the claims of Plaintiffs and Tribes against Settling Defendant as provided in this Consent Decree.

6. Commitments by Settling Defendant. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, the Phase 1 Remedial Design Work Plan, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by EPA (and WDNR, as applicable) pursuant to this Consent Decree. Settling Defendant shall pay the United States for Future Response Costs as provided in this Consent Decree and shall provide compensation for Natural Resource Damages as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and local laws, regulations, and ordinances. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendant may seek relief under the provisions of Section XX (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 8.a and required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal, state, or local statute, regulation, or ordinance.

9. Notice to Successors-in-Title and Transfers of Real Property.

a. For any real property owned or controlled by Settling Defendant located at the Phase 1 Project Area, Settling Defendant shall, within 15 days after the Effective Date, submit to EPA and WDNR for review and EPA approval, after consultation with WDNR, a proposed notice to be filed with the appropriate land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that Settling Defendant has entered into a Consent Decree requiring implementation of the remedy for the Phase 1 Project Area. The notice also shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The notice shall also state that information relating to Institutional Controls impacting the property is maintained on the WDNR Database and include the internet address for the WDNR Database. Settling Defendant shall record the notice within ten working days after receiving approval of the notice from EPA and WDNR. Settling Defendant shall provide EPA

and WDNR with a certified copy of the recorded notice within ten working days after recording such notice.

b. Settling Defendant shall, at least 60 days prior to any Transfer of any real property located at the Phase 1 Project Area, give written notice: (1) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (2) to EPA and WDNR regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

c. Settling Defendant may Transfer any real property located at the Phase 1 Project Area only if: (1) any Institutional Controls required by Paragraph 26.c have been placed in the WDNR Database, and recorded, if required, with respect to the real property; or (2) Settling Defendant has obtained an agreement from the transferee, enforceable by Settling Defendant, the United States, and the State and approved in writing by EPA, after consultation with WDNR, to (i) allow access and restrict land/water use, pursuant to Paragraphs 27.a(1) and 27.a(2), (ii) record and place in the WDNR Database any Institutional Controls on the real property, pursuant to Paragraph 27.a(3), and (iii) subordinate transferee's rights to any such Institutional Controls, pursuant to Paragraph 27.a(3). If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 9.c, Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States and the State may seek the transferee's compliance with the agreement and/or assist Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States under Section XVII (Payments for Response Costs), for all costs incurred, direct or indirect, by Plaintiffs regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

d. In the event of any Transfer of real property located at the Phase 1 Project Area, unless the United States, after consultation with the State, otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls. Settling Defendant may require third parties to accept responsibility for some or all of its obligations under the Consent Decree. Unless the United States, after consultation with the State, agrees otherwise in a consent decree modification filed with the Court, Settling Defendant shall remain responsible for all obligations under the Consent Decree, notwithstanding any agreement between Settling Defendant and any third party.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Phase 1 Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), IX (Access and Institutional Controls), and XV (Emergency Response) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after consultation with WDNR. Within 5 working days of the Effective Date, Settling Defendant shall notify EPA and

WDNR in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendant shall demonstrate that the proposed contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. After consultation with WDNR, EPA will issue either a notice of disapproval or an authorization to proceed regarding hiring of the proposed Supervising Contractor. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and WDNR and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days after receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA and WDNR of the name of the contractor selected within 21 days after EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendant from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Settling Defendant may seek relief under Section XX (Force Majeure).

11. Phase 1 Remedial Design.

a. The Phase 1 Remedial Design Work Plan has been approved by EPA after consultation with WDNR. The Phase 1 Remedial Design Work Plan shall be incorporated into and enforceable under this Consent Decree. Within 30 days after EPA's issuance of an authorization to proceed under Paragraph 10, Settling Defendant shall submit to EPA and WDNR a Health and Safety Plan for field design activities that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. Pursuant to the schedule set forth in the SOW, after submission of the Health and Safety Plan for all field activities to EPA and WDNR, Settling Defendant shall implement the Phase 1 Remedial Design Work Plan. Settling Defendant shall submit to EPA and WDNR all plans, reports, and other deliverables required under the approved Phase 1 Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables).

c. The preliminary design submission shall include, at a minimum, the elements outlined in Section III, Task 2, A. (Preliminary Design) of the SOW, including the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field

sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings, and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

d. The pre-final/final design submission shall include, at a minimum, the elements outlined in Section III, Task 2, B. (Prefinal and Final Design) of the SOW, including the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Plan (CQAP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAP, which shall detail the approach to quality assurance during construction activities at the Phase 1 Project Area, shall specify a quality assurance official, independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Phase 1 Remedial Action.

a. Within 30 days after the approval of the final design submission, Settling Defendant shall submit to EPA and WDNR the Phase 1 Remedial Action Work Plan. The Phase 1 Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD with respect to the Phase 1 Project Area in accordance with this Consent Decree, the ROD, the SOW, the Phase 1 Remedial Design Work Plan, and the design plans and specifications developed in accordance with the Phase 1 Remedial Design Work Plan and approved by EPA and WDNR, if applicable. Upon its approval, the Phase 1 Remedial Action Work Plan shall be incorporated into and enforceable under this Consent Decree. At the same time as it submits the Phase 1 Remedial Action Work Plan, Settling Defendant shall submit to EPA and WDNR a Health and Safety Plan for field activities required by the Phase 1 Remedial Action Work Plan that conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Phase 1 Remedial Action Work Plan shall include the following: (1) schedule for completion of the Phase 1 Remedial Action; (2) method for selection of contractors; (3) schedule for developing and submitting other required Phase 1 Remedial Action plans; (4) groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementing the Operation and Maintenance Plan; (7) methodology for implementing the Contingency Plan; (8) tentative formulation of the Phase 1 Remedial Action team; (9) CQAP (by construction contractor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Phase 1 Remedial Action Work Plan also shall include the methodology for implementing the CQAP and a schedule for implementing all Phase 1 Remedial Action tasks identified in the final design submission and shall identify the initial formulation of Settling Defendant's Phase 1 Remedial Action project team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Phase 1 Remedial Action Work Plan by EPA and WDNR, if applicable, Settling Defendant shall implement the activities required under the Phase 1 Remedial Action Work Plan. As part of the approval of the Phase 1 Remedial Action Work Plan, WDNR may impose restrictions, limitations, or other conditions on the property and place the required Institutional Controls in the WDNR Database. If a party other than Settling Defendant ("Performing Party") performs the remedy for the sediments in Chequamegon Bay, Settling Defendant may (i) install the final cap on the Kreher Park portion of the Site required by the Phase 1 Remedial Design or (ii) elect to reimburse the Performing Party for the costs of installing the final cap on the Kreher Park portion of the Site required by the Phase 1 Remedial

Design. Should EPA be the Performing Party, and Settling Defendant elect to reimburse EPA rather than install the final Kreher Park cap, Settling Defendant shall reimburse EPA for its costs of installing the final Kreher Park cap as Future Response Costs.

d. Settling Defendant shall submit to EPA and WDNR all reports and other deliverables required under the approved Phase 1 Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Settling Defendant shall not commence physical Phase 1 Remedial Action activities at the Phase 1 Project Area prior to approval of the Phase 1 Remedial Action Work Plan.

13. Settling Defendant shall continue to implement the Phase 1 Remedial Action until the Phase 1 Performance Standards are achieved. Settling Defendant shall implement O&M for so long thereafter as is required by this Consent Decree.

14. Modification of SOW or Related Work Plans.

a. If EPA, after consultation with WDNR, determines that it is necessary to modify the work specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the Phase 1 Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD with respect to the Phase 1 Project Area, and such modification is consistent with the scope of the remedy set forth in the ROD with respect to the Phase 1 Project Area, then EPA may issue such modification in writing and shall notify Settling Defendant of such modification. For the purposes of this Paragraph and Paragraphs 50 (Completion of the Phase 1 Remedial Action) and 51 (Completion of the Work) only, the "scope of the remedy set forth in the ROD" is the remedy described in the ROD for the Phase 1 Project Area. If Settling Defendant objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 80 (Record Review).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendant shall implement all work required by such modification. Settling Defendant shall incorporate the modification into the Phase 1 Remedial Design or Phase 1 Remedial Action Work Plan under Paragraph 11 (Phase 1 Remedial Design) or Paragraph 12 (Phase 1 Remedial Action), as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Nothing in this Consent Decree, the SOW, or the Phase 1 Remedial Design or Phase 1 Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Phase 1 Performance Standards.

16. Off-Site Shipment of Waste Material.

a. Settling Defendant may ship Waste Material from the Site to an off-site facility only if it verifies, prior to any shipment, that the off-site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

b. Settling Defendant may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA and WDNR Project Coordinators. This notice requirement shall not apply to any off-site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Defendant also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Defendant shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

c. If Settling Defendant intends to transport or manage Waste Material within the State, Settling Defendant shall comply with the applicable requirements of Chapter 289 of the Wisconsin Statutes and Chapters 500 to 538 of the Wisconsin Administrative Code.

VII. PHASE 1 REMEDY REVIEW

17. Periodic Review. Settling Defendant shall conduct any studies and investigations that EPA, after consultation with WDNR, requests in order to permit EPA to conduct reviews of whether the Phase 1 Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, after consultation with WDNR, that the Phase 1 Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Phase 1 Project Area in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. § 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Phase 1 Project Area, EPA may require Settling Defendant to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 97 or Paragraph 98 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Defendant may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 97 or Paragraph 98 are satisfied, (b) EPA's determination that the Phase 1 Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Phase 1 Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 80 (Record Review).

21. Submission of Plans. If Settling Defendant is required to perform further response actions pursuant to Paragraph 20, it shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by Settling Defendant). Settling Defendant shall also submit the plan to WDNR. Settling Defendant shall implement the approved plan in accordance with this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Quality Assurance.

a. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after consultation with WDNR, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendant shall ensure that EPA and WDNR personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA and WDNR pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4," and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2," and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by WDNR, Settling Defendant may use other analytical methods that are as stringent as or more stringent than the CLP-approved methods. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality assurance/quality control ("QA/QC") program. Settling Defendant shall use only laboratories that have a documented Quality System that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting

samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA and WDNR or their authorized representatives. Settling Defendant shall notify EPA and WDNR not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and WDNR shall have the right to take any additional samples that EPA or WDNR deem necessary. Upon request, EPA and WDNR shall allow Settling Defendant to take split or duplicate samples of any samples they take as part of Plaintiffs' oversight of Settling Defendant's implementation of the Work.

24. Settling Defendant shall submit to EPA and WDNR two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Phase 1 Project Area and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, Chapter 292 of the Wisconsin Statutes, and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If the Phase 1 Project Area, any portion of the Phase 1 Project Area, or any other real property where access or land/water use restrictions are needed is owned or controlled by Settling Defendant:

a. Settling Defendant shall, commencing on the date of lodging of the Consent Decree, provide the United States, the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to the portions of the Phase 1 Project Area or any other real property owned or controlled by Settling Defendant to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States or the State;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved CQAP;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 102 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXVI (Access to Information);

(9) Assessing Settling Defendant's compliance with the Consent Decree;

(10) Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, under the Consent Decree; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls and the requirements of the ICIAP.

b. Commencing on the date of lodging of the Consent Decree, Settling Defendant shall not use the Phase 1 Project Area, or such other real property, in any manner that EPA or WDNR determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the remedy set forth in the ROD for the Site. The restrictions shall include, but not be limited to: prohibition on the use of contaminated groundwater and any excavation, drilling, or digging that could expose buried Waste Materials that remain on-site after completion of the remedy set forth in the ROD for the Site; and

c. Settling Defendant shall:

(1) Grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 26.a; and grant the right to enforce the land/water use restrictions, conditions, or limitations set forth in Paragraph 26.b, including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP, as further specified in this Paragraph 26.c. Access and the right to enforce restrictions, conditions, or limitations shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; and/or (iii) other appropriate grantees. Access and the right to enforce restrictions, conditions, or limitations other than those granted to the United States, shall include a designation that EPA, and/or WDNR as appropriate, is a "third-party beneficiary," allowing EPA and/or WDNR to maintain the right to enforce the access and the right to enforce restrictions, conditions, or limitations without acquiring an interest in real property. If any access or rights to enforce restrictions, conditions, or limitations are granted to Settling Defendant pursuant to this Paragraph 26.c(1), then such Settling Defendant shall monitor, maintain, report on, and enforce such Institutional Controls.

(2) When submitting its final Phase 1 Remedial Design, submit to EPA and WDNR for EPA's review and approval, after consultation with WDNR, regarding such real property: (i) draft Institutional Controls that are enforceable under state or local law; (ii) the information required for the WDNR Database under WIS. STAT. §292.12(3); and (iii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Institutional Controls to be free and clear of all prior liens and encumbrances (except when EPA

waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

(3) Within 15 days of the approval and acceptance of the Phase 1 Remedial Action Work Plan from EPA and WDNR, update the title insurance commitment or other evidence of title acceptable to EPA, and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, Settling Defendant shall provide EPA and WDNR with a final title insurance policy, or other final evidence of title acceptable to EPA. If the Institutional Controls are to be conveyed to the United States or the State, the Institutional Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

(4) Should EPA and WDNR determine that the Institutional Controls require modification, draft and finalize revised Institutional Controls as requested by EPA and WDNR. Upon request by EPA or WDNR, Settling Defendant shall execute and record easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

d. Within 15 days of the approval and acceptance of the Phase 1 Remedial Action Work Plan and issuance of an approval letter to Settling Defendant incorporating Institutional Controls, WDNR shall place the Institutional Controls in the WDNR Database.

e. As part of certifying the Completion of Work under Paragraph 51.b, EPA and WDNR may update or impose new restrictions, limitations, or other conditions on the property, and WDNR shall place the required Institutional Controls in the WDNR Database.

f. Commencing on the date of lodging of the Consent Decree, Settling Defendant shall comply with the following requirements of Paragraph 1 of the 1998 Spill Response Agreement ("Spill Agreement") between Settling Defendant and DNR: Activity No. a (related to lakefront warning signs) and Activity No. d (related to warning buoys in Chequamegon Bay). This Consent Decree does not otherwise affect the applicability of any provision of the Spill Agreement. The Spill Agreement is included as Appendix D to this Consent Decree and is incorporated by reference only as to Activity No. a (related to lakefront warning signs) and Activity No. d (related to warning buoys in Chequamegon Bay), as required by this Paragraph 26.f, and does not otherwise affect the provisions of this Consent Decree.

27. For those portions of the Phase 1 Project Area or any other real property where access and/or land/water use restrictions are needed that are owned or controlled by persons other than Settling Defendant:

a. Settling Defendant shall use best efforts to secure from such persons:

(1) an agreement to provide access thereto for the United States, the State, and Settling Defendant, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraphs 26.a and 26.f;

(2) an agreement, enforceable by Settling Defendant, the United States, and the State, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Phase 1 Remedial Action. The agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraphs 26.b and 26.f; and

(3) the execution of Institutional Controls that can be included in the WDNR Database, that (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 26.a and 26.f, and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 26.b and 26.f, including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP. The Institutional Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Settling Defendant and its representatives, and/or (iv) other appropriate grantees. The Institutional Controls, other than those granted to the United States, shall include a designation that EPA, and/or WDNR as appropriate, is a third party beneficiary, allowing EPA and/or WDNR to maintain the right to enforce the Institutional Controls without acquiring an interest in real property. If any Institutional Controls are granted to any Settling Defendant pursuant to this Paragraph 27.a(3), then Settling Defendant shall monitor, maintain, report on, and enforce such Institutional Controls.

b. Settling Defendant shall provide notification to such persons of the pending imposition of Institutional Controls for those properties, and placement of the relevant information in the WDNR Database.

c. When submitting its final Phase 1 Remedial Design, Settling Defendant shall submit to EPA and WDNR for EPA approval, after consultation with WDNR, regarding such property: (i) draft Institutional Controls that are enforceable under state or local law; (ii) the information required for the WDNR Database; and (iii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Institutional Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

d. Within 15 days of the approval and acceptance of the Phase 1 Remedial Action Work Plan from EPA and WDNR, Settling Defendant shall update the title insurance commitment or other evidence of title acceptable to EPA and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, Settling Defendant shall record a notice with the appropriate land records office that states the real property's relationship to the Site, that EPA has selected a remedy for the Site, that a Consent Decree has been entered for the Phase 1 Remedial Action, and that Institutional Controls for the property are set forth in the WDNR Database. The notice also shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Within 30 days

after the notice is recorded with the land records office, Settling Defendant shall provide EPA and WDNR with a final title insurance policy, or other final evidence of title acceptable to EPA, as well as a certified copy of the original recorded deed notice showing the register's recording stamp. The Institutional Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

e. Within 15 days of the approval and acceptance of the Phase 1 Remedial Action Work Plan and issuance of an approval letter to Settling Defendant incorporating Institutional Controls, WDNR shall place the Institutional Controls in the WDNR Database.

f. Should EPA and WDNR determine that the Institutional Controls require modification, Settling Defendant shall draft and finalize revised Institutional Controls as requested by EPA and WDNR. Upon request by EPA or WDNR, Settling Defendant shall execute and record easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

g. As part of certifying the Completion of Work under Paragraph 51.b, EPA and WDNR may update or impose new restrictions, limitations, or other conditions on the property, and WDNR shall place the required Institutional Controls in the WDNR Database.

28. For purposes of Paragraphs 26 and 27, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, and/or an agreement to release or subordinate a prior lien or encumbrance, except that "best efforts" shall not include payment of money to any party that has received special notice of potential liability related to the Site. If, within 60 days after the Effective Date, Settling Defendant has not: (a) obtained agreements to provide access or restrict land/water use, as required by Paragraph 27.a(1) and 27.a(2); or (b) obtained, pursuant to Paragraph 26.c(2) or 27.c, agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances, Settling Defendant shall promptly notify Plaintiffs in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraphs 26 or 27. Plaintiffs may, as they deem appropriate, assist Settling Defendant in obtaining access, agreements to restrict land/water use, or the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States under Section XVII (Payments for Response Costs) for all costs incurred, direct or indirect, by Plaintiffs in obtaining such access, agreements to restrict land/water use, Institutional Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA or WDNR determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Settling Defendant shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

30. Notwithstanding any provision of the Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, Chapter 292 of the Wisconsin Statutes, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and WDNR two copies each of written monthly progress reports that: (a) describe the actions that have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all plans, reports, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Involvement Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and WDNR by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendant pursuant to Paragraph 51.b of Section XIV (Completion of the Work). The monthly progress reports required by this Paragraph may be submitted electronically unless EPA or WDNR requests otherwise. If requested by EPA or WDNR, Settling Defendant shall also provide briefings for EPA and WDNR to discuss the progress of the Work. Such briefings may occur telephonically if agreed by Settling Defendant and the government agency requesting the briefing.

32. Settling Defendant shall notify EPA and WDNR of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004, Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA and WDNR Project Coordinators (or their alternates, as necessary), or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days after the onset of such an event, Settling Defendant shall furnish to EPA and WDNR a written report, signed by Settling Defendant's Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 30 days after the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendant shall submit two copies of all plans, reports, data, and other deliverables required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit two copies of all such plans, reports, data, and other deliverables to WDNR. Upon request by EPA or WDNR, Settling Defendant shall submit in electronic form all or any portion of any deliverables Settling Defendant is required to submit pursuant to the provisions of this Consent Decree to the entity requesting electronic submission.

36. All deliverables submitted by Settling Defendant to EPA and WDNR that purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant.

XI. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

37. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by WDNR, shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing.

b. EPA, after consultation with WDNR, also may modify the initial submission to cure deficiencies in the submission if: (1) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (2) previous submission(s) on the same issue have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

38. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 37.a(3) or (4), or if required by a notice of approval upon specified conditions under Paragraph 37.a(2), Settling Defendant shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA, after consultation with WDNR, may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (e) any combination of the foregoing.

39. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 37.b(2) or 38 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 83. The provisions of Section XXI (Dispute Resolution) and Section XXII (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Defendant's submissions under this Section.

40. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 37 (Initial Submissions) or Paragraph 38 (Resubmissions) of any plan,

report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Settling Defendant shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 37 or 38 shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

XII. PROJECT COORDINATORS

41. Within 20 days after lodging this Consent Decree, Settling Defendant, the State, and EPA will notify each other, in writing, of the name, address, and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties listed in the prior sentence at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Project Coordinator shall be subject to disapproval by EPA, after consultation with WDNR, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Unless approved by Plaintiffs, Settling Defendant's Project Coordinator shall not be an attorney for Settling Defendant in this matter. A Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

42. Plaintiff may designate other representatives, including, but not limited to, EPA and WDNR employees and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

43. EPA's Project Coordinator and Settling Defendant's Project Coordinator will meet, at a minimum, on a monthly basis. Such meetings may occur telephonically by agreement of the Project Coordinators.

XIII. PERFORMANCE GUARANTEE

44. In order to ensure the full and final completion of the Work, Settling Defendant shall establish and maintain a performance guarantee, initially in the amount of $40 million, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Settling Defendant intends to use multiple

mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies):

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that (1) provides EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Settling Defendant that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (1) a direct or indirect parent company of a Settling Defendant, or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

45. Settling Defendant has selected, and EPA has found satisfactory as an initial performance guarantee the financial test pursuant to Paragraph 44.e in the form attached hereto as Appendix E. Within ten days after the Effective Date, Settling Defendant shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix E, and such performance guarantee(s) shall thereupon be fully effective. Within 30 days after the Effective Date, Settling Defendant shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVIII (Notices and Submissions), with a copy to the United States, EPA, and the State as specified in Section XXVIII.

46. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 51, Settling Defendant provides a performance

guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 44.e or 44.f, Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf; (b) the annual resubmission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to Settling Defendant; and the terms "facility" and "hazardous waste facility" shall be deemed to include the Phase 1 Project Area.

47. In the event that EPA, after consultation with WDNR, determines at any time that a performance guarantee provided by Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that Settling Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendant, within 30 days after receipt of notice of EPA's determination or, as the case may be, within 30 days after becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 44 that satisfies all requirements set forth in this Section XIII; provided, however, that if Settling Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that Settling Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for the Settling Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 60 days. On day 30, Settling Defendant shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 49.b(2). Settling Defendant's inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Work in strict accordance with the terms of this Consent Decree.

48. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 102 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 44.a, 44.b, 44.c, 44.d, or 44.f, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 44.e or Paragraph 44.f(2), Settling Defendant (or in the case of Paragraph 44.f(2), the guarantor) shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the remainder of the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Settling Defendant provide a substitute performance guarantee mechanism in accordance with this Section XIII no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XVII (Payments for Response Costs).

49. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Defendant believes that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 44, Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by EPA and Settling Defendant, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. Settling Defendant shall submit a written proposal for such reduction to EPA, with a copy to WDNR, that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 49.b(2) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 49.a. If EPA, after consultation with WDNR, decides to accept Settling Defendant's proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Settling Defendant's written proposal or to some other amount as selected by EPA, EPA will notify Settling Defendant of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written decision, Settling Defendant may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 49.b(2). In the event of a dispute, Settling

Defendant may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XXI (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 47 or 49.b.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Settling Defendant desires to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by EPA and Settling Defendant, petition EPA in writing, with a copy of the petition to WDNR, to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 49.b(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendant shall submit a written proposal for a revised or alternative performance guarantee to EPA, with a copy to WDNR, that shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendant shall submit such proposed revised or alternative performance guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVIII (Notices and Submissions). EPA, after consultation with WDNR, will notify Settling Defendant in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative performance guarantee, Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Defendant shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer within 30 days after receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXVIII (Notices and Submissions), with a copy to the United States and EPA and WDNR as specified in Section XXVIII.

c. Release of Performance Guarantee. Settling Defendant shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Settling Defendant receives written notice from EPA in accordance with Paragraph 51 that the Work has been fully and finally completed in accordance

with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendant in writing, Settling Defendant may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, Settling Defendant may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XXI (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Phase 1 Remedial Action.

a. Within 90 days after Settling Defendant concludes that the Phase 1 Remedial Action has been fully performed and the Phase 1 Performance Standards have been achieved, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and WDNR. If, after the pre-certification inspection, Settling Defendant still believes that the Phase 1 Remedial Action has been fully performed and the Phase 1 Performance Standards have been achieved, it shall submit a written report requesting certification to EPA for approval, with a copy to WDNR, pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables) within 30 days after the inspection. In the report, a registered professional engineer and Settling Defendant's Project Coordinator shall state that the Phase 1 Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendant's Project Coordinator:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by WDNR, determines that the Phase 1 Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Phase 1 Performance Standards have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Phase 1 Remedial Action and achieve the Phase 1 Performance Standards, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Settling Defendant shall perform all activities described in the notice in

accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Phase 1 Remedial Action and after a reasonable opportunity for review and comment by WDNR, that the Phase 1 Remedial Action has been performed in accordance with this Consent Decree and that Phase 1 Performance Standards have been achieved, EPA will so certify in writing to Settling Defendant. This certification shall constitute the Certification of Completion of the Phase 1 Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIII (Covenants by Plaintiffs and Tribes). Certification of Completion of the Phase 1 Remedial Action shall not affect Settling Defendant's remaining obligations under this Consent Decree. WDNR may join EPA in certifying completion of the Phase 1 Remedial Action.

51. Completion of the Work.

a. Within 90 days after Settling Defendant concludes that all phases of the Work, other than any remaining activities required under Section VII (Phase 1 Remedy Review), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and WDNR. If, after the pre-certification inspection, Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the statement set forth in Paragraph 50.a, signed by a responsible corporate official of a Settling Defendant or Settling Defendant's Project Coordinator. If, after review of the written report, EPA, after reasonable opportunity for review and comment by WDNR, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by Settling Defendant and after a reasonable opportunity for review and comment by WDNR, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendant in writing. WDNR may join EPA in certifying Completion of the Work.

XV. EMERGENCY RESPONSE

52. If any action or occurrence during the performance of the Work causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA and WDNR Project Coordinators (or their alternates, if necessary). If neither EPA's Project Coordinator nor EPA's Alternate Project Coordinator is available, Settling Defendant shall notify the EPA Emergency Response Unit, Region 5. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section and EPA or, as appropriate, WDNR takes such action instead, Settling Defendant shall reimburse EPA and WDNR all costs of the response action under Section XXVII (Payments for Response Costs).

53. Subject to Section XXIII (Covenants by Plaintiffs and Tribes), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State to (a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVI. TECHNICAL IMPRACTICABILITY

54. Settling Defendant may petition EPA to waive compliance with one or more of the Phase 1 Performance Standards for groundwater contaminants based on a demonstration that it is technically impracticable, from an engineering perspective, to attain those standards.

55. The determination of whether attainment of a particular Phase 1 Performance Standard is technically impracticable will be made by EPA, after consultation with WDNR, and will be based on the engineering feasibility and reliability of the remedy. If Settling Defendant objects to EPA's decision it may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 80 (Record Review).

56. EPA will consider a petition for a waiver of Phase 1 Performance Standards on technical impracticability grounds only after the selected groundwater remedy has been functioning and operational for a sufficiently long time period (longer than five years) to make reliable predictions concerning its ability to achieve the Phase 1 Performance Standards. This determination will be made by EPA based on Site-specific data and conditions. If the first petition is rejected, a subsequent petition will be considered by EPA only if EPA determines that it is based on significant new Site-specific data which could not have been developed at the time the previous petition was submitted.

57. Neither the submission of a petition by Settling Defendant nor the granting of a waiver of one or more Phase 1 Performance Standards by EPA pursuant to this Section shall relieve Settling Defendant of its obligation to (i) continue to operate the groundwater remedy

until the time specified by EPA, (ii) attain Phase 1 Performance Standards for any contaminants for which EPA has not specifically granted a waiver, and (iii) complete any other obligation under this Consent Decree.

58. Such a petition shall include, at a minimum, the information and analyses required by EPA guidance and the site-specific information described in Subparagraphs (a) through (l), as follows:

a. A list of each Phase 1 Performance Standard for which a waiver is sought, and the spatial limits for which it is sought. The justification for a waiver required by items (b) - (l) below must be made for each contaminant or class of contaminants for which a waiver is sought.

b. A description of known or suspected groundwater contaminant sources at the Site, including dense non-aqueous phase liquid ("DNAPL") contaminants. The petition also shall describe source control and removal efforts that have been implemented and the effectiveness of those efforts.

c. Comprehensive groundwater monitoring data and an evaluation of the groundwater remedy implemented, along with any other remediation actions performed which enhanced or affected this remedy. The monitoring data and performance evaluation shall demonstrate, using an appropriate engineering and statistical analysis, that the groundwater remedy has been operating for a sufficiently long period of time, as stated in Paragraph 56, to permit a reliable analysis of its performance and its ability to achieve Phase 1 Performance Standards. The petition also shall demonstrate that the remedy has been designed, constructed, and operated in a manner which is consistent with the Phase 1 Remedial Design Work Plan, the Phase 1 Remedial Action Work Plan, and the conceptual models for Site contamination, and that the system has been modified or enhanced to the extent practicable to optimize its performance in an effort to attain the Phase 1 Performance Standards. Examples of modifications and enhancements which would be applicable here, in addition to the contingency requirements of the ROD, are as follows: [1] Pumping may be discontinued at individual wells where cleanup goals have been attained; [2] Alternating pumping at wells to eliminate stagnation points; [3] Pulse pumping to allow contaminants to aquifer equilibration and encourage adsorbed contaminants to partition into groundwater; and [4] Installation of additional extraction wells to facilitate or accelerate cleanup of the contaminant plume.

d. A description of the conceptual model for Phase 1 Project Area contamination, including geologic, hydrogeologic, and geochemical characterizations. A description of the distribution; characteristics; migration, potential migration, and fate; and quantities of contaminants present at the Phase 1 Project Area. These descriptions shall incorporate pertinent data obtained during the design, construction, and operation of the remedial system, as well as information obtained during previous Site characterization efforts.

e. An analysis of the performance of the groundwater remedy which describes the spatial and temporal trends in groundwater contaminant concentrations within the groundwater plume; for example, whether contaminant migration has been effectively prevented, whether there have been changes in the overall size or location of the groundwater plume, and whether the concentrations of contaminants have been slowly decreasing. The petition shall discuss the hydrogeochemical factors which influence the remedy's ability to achieve the Phase

1 Performance Standards, and demonstrate how these factors inhibit the remedial system achieving the Phase 1 Performance Standards.

f. The mass of contaminants removed from the groundwater by the remedial system, and an estimate of the mass of contaminants remaining, including the degree of uncertainty involved in this estimate.

g. A demonstration, including appropriate engineering analysis, that other conventional or innovative technologies which are potentially applicable at the Phase 1 Project Area cannot attain the Phase 1 Performance Standards in a manner that is practicable from an engineering perspective. This demonstration should include a prediction of the level of cleanup other technologies can attain.

h. A predictive analysis of the approximate time frame required to achieve the Phase 1 Performance Standards with the existing groundwater remedy, and any alternative remedial strategies, if applicable, using methods appropriate for the data and the Site-specific conditions. Such analyses also should address the uncertainty inherent in these predictions.

i. For the implemented remedy and for any alternative remedial strategies proposed as part of this petition, identification of the potential pathways by which humans and the environment are or may become exposed to the contaminated groundwater left in place. Contaminant concentration and other data needed for EPA to perform risk analyses shall be provided as part of the petition.

j. A description of the proposed alternative remedial strategy, or a comparison of two or more strategy options, proposed to be implemented by the Settling Defendant if a waiver is granted, and the level of cleanup and control of hazardous substances, pollutants, and contaminants the proposed alternative strategy or strategies will attain. Alternative remedial strategies must attain a level of cleanup and control of further releases which ensure protection of human health and the environment, and prevent further migration of contaminated groundwater. Alternative remedial strategies may include the establishment of alternative performance standards, Site-specific cleanup levels, and other alternative remediation requirements to ensure protectiveness. Proposed modifications to the existing remedy, and any additional response actions proposed to be undertaken, shall be described by the Settling Defendant in detail. EPA will make the final determination regarding the components of the alternative remedial strategy which shall be implemented at the Phase 1 Project Area by the Settling Defendant.

k. A description of any additional groundwater monitoring required to verify compliance with the alternative performance standards or remedial requirements. EPA will make the final determination regarding the scope of the groundwater monitoring requirements under the alternative remedial strategy.

l. Other information or analyses not included above, but which Settling Defendant or EPA considers appropriate to making a determination on the petition.

59. Upon receipt of all information required by Paragraph 58, EPA will review and consider the information in the petition and any other relevant information. After opportunity for review and comment by WDNR, EPA will determine (1) whether compliance with any of the Phase 1 Performance Standards shall be waived; (2) what, if any, alternative remediation requirements, including alternative performance standards and other protective measures, will be

established by EPA; (3) whether modifications to the groundwater portion of the Phase 1 Remedial Action or any additional response actions relating to groundwater contamination are required; and (4) whether revised interim milestone and completion dates are needed for attainment of Phase 1 Performance Standards or alternative performance standards under this Consent Decree. EPA's determination on the petition will be consistent with the National Contingency Plan ("NCP"), Section 121(d) of CERCLA, and any other applicable laws, regulations, and guidance in effect at the time.

60. If EPA, after a reasonable opportunity for review and comment by WDNR, grants any petition or other relief pursuant to this Section, that decision will be reflected in a post-ROD decision document, as required by the NCP. If modification of this Consent Decree or the SOW is required to implement EPA's decision, such modification will be filed and, if necessary, Court approval will be sought in accordance with Section XXXII of this Consent Decree (Modification). Upon issuance of EPA's post-ROD decision document, filing of the revised SOW and Consent Decree with the Court, and if necessary, issuance of a court order approving the modification, Settling Defendant shall implement the modifications selected by EPA to the groundwater portion of the remedial action or additional response actions relating to groundwater contamination, and achieve and maintain all Phase 1 Performance Standards, alternative performance standards, and remediation requirements established pursuant to this Section. Unless expressly modified by EPA's decision on the petition submitted hereunder, all requirements of this Consent Decree, including Settling Defendant's obligation to achieve the alternative performance standards and to conduct long-term groundwater monitoring, shall continue in force and effect.

XVII. PAYMENTS FOR RESPONSE COSTS

61. Payments by Settling Defendant for Future Response Costs. Settling Defendant shall pay to EPA all Future Response Costs not inconsistent with the NCP, excluding the first $1.5 million of Future Oversight Costs.

a. On a periodic basis, EPA will send Settling Defendant a bill requiring payment that includes an itemized cost summary and a DOJ case cost summary. Settling Defendant shall make all payments within 30 days after Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 63, in accordance with Paragraphs 62 (Payment Instructions for Settling Defendant).

b. The total amount to be paid by Settling Defendants pursuant to Paragraph 61.a shall be deposited by EPA in the Ashland/Northern States Power Special Account (Account No. 2751026S062) to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

62. Payment Instructions for Settling Defendant.

a. All payments shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

b. All payments made shall reference the CDCS Number, Site/Spill ID Number B5 N5, and DOJ Case Number 90-11-2-08879/1. At the time of any payment required to be made, Settling Defendant shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XXVIII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

63. Settling Defendant may contest any Future Response Costs billed under Paragraph 61 (Payments by Settling Defendant for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XXVIII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendant shall pay all uncontested Future Response Costs to the United States within 30 days after Settling Defendant's receipt of the bill requiring payment. Simultaneously, Settling Defendant shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendant shall send to the United States, as provided in Section XXVIII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the Dispute Resolution procedures in Section XXI (Dispute Resolution). If the United States prevails in the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States within five days after the resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within five days after the resolution of the dispute. Settling Defendant shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with

Paragraphs 62 (Payment Instructions for Settling Defendant). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

64. Interest. In the event that any payment for Future Response Costs required under this Section is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 84.

XVIII. NATURAL RESOURCE RESTORATION PROJECTS

65. As Settling Defendant's full contribution toward Natural Resource Damages, subject to Paragraphs 100 and 101, Settling Defendant shall convey, or cause to be conveyed, on an "As Is, Where Is" basis, certain properties as described below ("Restoration Properties"):

a. Bad River Falls Project. In order to improve Natural Resources in the Bad River Falls area, Settling Defendant shall convey, or cause to be conveyed, by special warranty deed in the form contemplated below in Paragraph 67.a, to the Bad River Band of the Lake Superior Tribe of Chippewa Indians the land owned by Settling Defendant within the Bad River Reservation, totaling approximately 400 acres within the following tracts: part of the NE ¼ of the NE ¼; part of the NW ¼ of the NE ¼; part of the SE ¼ of the NE ¼; part of the NE ¼ of the SW ¼; part of the NW ¼ of the SW ¼; part of the NE ¼ of the SE ¼; and part of the NW ¼ of the SE ¼; all located in Section 36, T47N, R3W, Town of Sanborn, Ashland County, Wisconsin; and part of Govt. Lot 1 in the NE ¼ of the SE ¼; part of Govt. Lots 3 and 4 in the NW ¼ of the SE ¼; part of Govt. Lot 5 in the SW ¼ of the SE ¼; part of Govt. Lot 6 in the NE ¼ of the SW ¼; part of Govt. Lot 7 in the SE ¼ of the SW ¼; and Part of Govt. Lot 11 in the SW ¼ of the NE ¼; all located in Section 25, T47N, R3W, Town of Sanborn, Ashland County, Wisconsin. Settling Defendant (or Settling Defendant's Related Parties) shall be entitled to reserve (or to grant to itself or any of Settling Defendant's Related Parties) an easement, in the form attached as Appendix F, with respect to Settling Defendant's (or Settling Defendant's Related Parties') existing transmission and distribution lines and related equipment and facilities in the Restoration Property described in this Paragraph 65.a.

b. Iron River Project. In order to improve Natural Resources in the Iron River watershed, Settling Defendant shall convey, or cause to be conveyed, by special warranty deed, in the form contemplated below in Paragraph 67.a, lands owned by Setlling Defendant within the following tracts of property, totaling approximately 989.95 acres, to WDNR:

(1) Lake Superior Power Company Lands consisting of approximately 449.98 acres of land, being Lots 1 and 2 of Block 2; Lots 1, 2, 3, 4, 5, 6, 7 of Block 3; Lots 1, 2, 3, 4 of Block 4; Lots 1, 2, 5, 6, 7, 9, 10 of Block 5; all in Orienta Falls Park; and part of the SW¼ of the NE¼; part of the NE¼ of the NW¼; part of the NW¼ of the NW¼; the SW¼ of the NW¼; the SE¼ of the NW¼; the entire SW¼; the NW¼ of the

SE¼; the SW¼ of the SE¼; the SE¼ of the SE¼; all located in Section 10, T49N, R9W, Town of Orienta, Bayfield County, Wisconsin;

(2) Lake Superior Power Company Lands consisting of approximately 480 acres of land, being the entire NE¼; the entire NW¼; and the entire SE¼; all in Section 15, T49N, R9W, Town of Orienta, Bayfield County, Wisconsin;

(3) Lake Superior Power Company Lands consisting of approximately 40 acres of land in SE ¼ of the SE ¼, Section 9, T49N, R9W, Town of Orienta, Bayfield County, Wisconsin; and

(4) Lake Superior Power Company Lands consisting of approximately 19.97 acres of land, being Lots 1, 2, 3, 4 of Block 1 of Orienta Falls Park; and the remainder of the S ½ of the SW ¼ of the SW ¼, all located in Section 3, T49N, R9W, Town of Orienta, Bayfield County, Wisconsin.

Settling Defendant shall be allowed to complete a timber harvest on the properties listed in this Paragraph 65.b, subject to a plan ("Harvest Plan") to be drafted by Settling Defendant and approved by WDNR after consultation with the National Oceanic and Atmospheric Administration and the United States Fish and Wildlife Service. The timber harvest may be performed at various times so long as all harvest activity by Settling Defendant ceases within five years of the Effective Date. The Harvest Plan shall take into consideration WDNR's long-term management goals and objectives to improve Natural Resources in the Iron River watershed. WDNR shall collaborate with Settling Defendant, upon request, to develop the Harvest Plan. The rights under the Harvest Plan shall be recorded in a written agreement signed by the State and Settling Defendant.

c. The legal descriptions for the special warranty deeds and the easement shall be determined, and approximate acreages set forth in Paragraphs 65.a. and 65.b. shall be conformed, based on the results of the surveys and title reports contemplated in Paragraph 67.

66. In exchange for the actions to be taken by Settling Defendant pursuant to Paragraph 65, and pursuant to approval of the Natural Resources Board and the Governor, as provided for in WIS. STAT. §§ 23.15(1) and (2), the State shall convey, or cause to be conveyed, certain properties as described below ("Restoration Properties"):

a. Raspberry River Watershed Project. Pursuant to the approvals above, the State shall convey, or cause to be conveyed, under WIS. STAT. § 23.15, by quitclaim deed, the following property totaling approximately 119.62 acres to the Red Cliff Band of the Lake Superior Tribe of Chippewa Indians in order to improve Natural Resources in the Raspberry River Watershed:

(1) Government Lots 1 and 2 in Section 1, Town 51 North, Range 4 West; and

(2) Government Lot 2 in Section 36, Town 52 North, Range 4 West.

67. Within 60 days of the Effective Date of this Consent Decree:

a. Settling Defendant shall cause the following items to be transferred to the Trustees for review with respect to each of the Restoration Properties described in Paragraph 65:

(1) A draft special warranty deed (limited to the acts of Grantor) enforceable under the laws of the State of Wisconsin, free and clear of monetary liens (excluding taxes not yet due and payable) but subject to encumbrances of record (as long as those encumbrances do not preclude preservation) and matters that would be revealed by an accurate survey;

(2) A current title commitment or report prepared in accordance with customary practice in Ashland and Bayfield Counties, Wisconsin; and

(3) One or more surveys.

b. The State shall cause the following items to be transferred to the Trustees for review with respect to the Restoration Properties described in Paragraph 66:

(1) A draft quitclaim deed enforceable under the laws of the State of Wisconsin; and

(2) A current title commitment or report prepared in accordance with customary practice in Ashland and Bayfield Counties, Wisconsin.

c. Notwithstanding Paragraph 67.a, above, Trustees acknowledge that the lien of that certain Trust Indenture dated April 1, 1974, from Settling Defendant to U.S. Bank National Association, a corporation under the laws of the United States of America f/k/a Firstar Bank National Association, shall remain of record after the execution and delivery of the deeds required by Paragraph 65, but Settling Defendant shall obtain and furnish the relevant Trustees a partial release of said lien within 90 days from the date of delivery of said deeds such that there is no lien applicable to the Restoration Properties in Paragraph 65.

68. Restoration Property Title Transfer and Management.

a. With respect to the Restoration Properties each Party owns, Settling Defendant and the State shall:

(1) Within 45 days after submittal of the relevant draft deeds and other necessary instruments in Paragraphs 67.a and 67.b, cause title searches to be updated.

(2) Within 150 days after submittal of the relevant draft deeds and other necessary instruments in Paragraphs 67.a and 67.b, if it is determined that nothing has occurred since the effective date of the commitments or reports to affect the titles adversely, execute and deliver the deeds (as described in Paragraphs 67.a and 67.b) to the Restoration Properties described in Paragraphs 65 and 66 to the Trustees set forth in Paragraphs 65 and 66, at the sole expense of the transferring Party.

b. After the transfers, the Restoration Properties shall be preserved and managed by the transferee Trustees to protect and enhance the natural resource benefits associated with the Restoration Properties.

69. Dispute Resolution for Natural Resource Restoration Projects. This Paragraph applies solely to disputes under this Section and Paragraph 84.b(11)-(12).

a. Informal Dispute Resolution. Any dispute under this Paragraph shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. This dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

b. Formal Dispute Resolution. In the event that the parties cannot resolve a dispute under this Paragraph by informal negotiations, then the formal dispute procedures outlined by this Paragraph 69.b shall apply.

(1) The position advanced by Plaintiffs, after consulting with the Trustees, shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the Trustees a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant.

(2) Following receipt of Settling Defendant's Statement of Position, Plaintiffs, after consulting with the Trustees, will issue an administrative decision resolving the dispute which shall include or attach any factual data, analysis, opinion, or documentation supporting the decision. Plaintiffs shall compile and maintain an administrative record of the dispute containing Settling Defendant's Statement of Position and Plaintiffs' administrative decision. Plaintiffs' administrative decision shall be binding on Settling Defendant unless, within 30 days after receipt of the administrative decision, Settling Defendant files with the Court and serves on all Parties a motion for judicial review of the decision, based on the administrative record compiled and maintained by Plaintiffs pursuant to this Paragraph 69.b. Any such motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. Plaintiffs shall provide the Court a copy of the administrative record of the dispute, and may file a response to Settling Defendant's motion.

c. Effect of Invoking Dispute Resolution. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless Plaintiffs, after consulting with the Trustees, or the Court agree otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 90. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

XIX. INDEMNIFICATION AND INSURANCE

70. Settling Defendant's Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendant as EPA's or WDNR's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), or Chapters 289, 291, and 292 of the Wisconsin Statutes. Settling Defendant shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's or WDNR's authorized representative under Section 104(e) of CERCLA or Chapters 289, 291 and 292 of the Wisconsin Statutes. Further, Settling Defendant agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States and the State shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Defendant notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Paragraph 70, and shall consult with Settling Defendant prior to settling such claim.

71. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Phase 1 Project Area, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Phase 1 Project Area, including, but not limited to, claims on account of construction delays.

72. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50.b of Section XIV (Completion of the Phase 1 Remedial Action), commercial general liability insurance with limits of $2 million, for any one occurrence, and automobile liability insurance with limits of $2 million, combined single limit, naming the United States and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Settling Defendant pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and

regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA and WDNR certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XX. FORCE MAJEURE

73. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or failure to achieve the Phase 1 Performance Standards.

74. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 48 hours of when Settling Defendant first knew that the event might cause a delay. Within five days thereafter, Settling Defendant shall provide in writing to EPA and WDNR an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 73 and whether Settling Defendant has exercised its best efforts under Paragraph 73, EPA may, in its unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely notices under this Paragraph.

75. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

76. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 73 and 74. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION

77. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

78. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

79. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 80 (Record Review) or Paragraph 81.

b. Within 21 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any

factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 80 (Record Review) or Paragraph 81. Within ten days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 80 (Record Review) or Paragraph 81, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 80 and 81.

80. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 80.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 80.c and 80.d.

c. Any administrative decision made by EPA pursuant to Paragraph 80.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within ten days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 80.a.

81. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 79, the Director of the Superfund Division, EPA Region 5, will issue a

final decision resolving the dispute. The Superfund Division Director's decision shall be binding on Settling Defendant unless, within ten days after receipt of the decision, Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant' motion.

b. Notwithstanding Paragraph R (CERCLA Section 113(j) Record Review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

82. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 90. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

XXII. STIPULATED PENALTIES

83. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 84 and 85 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). "Compliance" by Settling Defendant shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

84. Stipulated Penalty Amounts – Compliance Milestones.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 84.b:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$1,500	15th through 30th day
$3,000	31st day and beyond

b. Compliance Milestones.

(1) Failure to timely submit or resubmit the Preliminary, Prefinal or Final Design;

(2) Failure to timely submit or resubmit the Phase 1 Remedial Action Work Plan;

(3) Failure to timely initiate Phase 1 Remedial Action Construction or to complete the Phase 1 Remedial Action;

(4) Failure to timely submit, resubmit, or to implement the Operation and Maintenance Plan;

(5) Failure to conduct Performance Monitoring;

(6) Failure to timely submit, resubmit, or implement the Institutional Control Implementation and Assurance Plan;

(7) Failure to establish or maintain the required performance guarantee pursuant to Section XIII of this Consent Decree;

(8) Failure to make best efforts to obtain or to provide access or to execute the required Institutional Controls and submit them to WDNR pursuant to Section IX of this Consent Decree;

(9) Failure to timely make payment of Future Response Costs pursuant to Section XVII of this Consent Decree;

(10) Failure to initiate or complete any further response actions EPA selects for the Phase 1 Project Area pursuant to Paragraph 20 of this Consent Decree;

(11) Failure to timely submit draft deeds for NRD Property pursuant to Paragraph 67 of this Consent Decree; and

(12) Failure to timely complete the transfers of NRD Property pursuant to Paragraph 68 of this Consent Decree.

85. Stipulated Penalty Amounts - Other Requirements. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables, other than those specified in the preceding Paragraph, or to satisfy any other requirement of the Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$2,000	31st day and beyond

86. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 102 (Work Takeover), Settling Defendant shall be liable for a stipulated penalty in the amount of $1.5 million. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 48 (Funding for Work Takeover) and 102 (Work Takeover).

87. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region

5, under Paragraph 80.b or 81.a of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XXI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

88. Following the United States' determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, the United States may give Settling Defendant written notification of the same and describe the noncompliance. The United States may send Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the United States has notified Settling Defendant of a violation.

89. All penalties accruing under this Section shall be due and payable to the United States within 30 days after Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XXI (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraph 62 (Payment Instructions for Settling Defendant), except that stipulated penalties pursuant to Paragraph 84.b(11)-(12) shall be made to the Financial Litigation Unit of the U.S. Attorney's Office for the Western District of Wisconsin pursuant to instructions to be provided by the Financial Litigation Unit if necessary. Dispute resolution for Paragraph 84.b(11)-(12) shall be conducted pursuant to Paragraph 69 (Dispute Resolution for Natural Resource Restoration Projects).

90. Penalties shall continue to accrue as provided in Paragraph 87 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 90.c;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

91. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling

Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 90 until the date of payment; and (b) if Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 89 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

92. The payment of penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

93. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and Chapters 289, 291, and 292 of the Wisconsin Statutes, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or Chapters 289, 291, and 292 of the Wisconsin Statutes for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

94. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXIII. COVENANTS BY PLAINTIFFS AND TRIBES

95. Covenants for Settling Defendant by the United States and the State.

a. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in Paragraphs 97 and 98 (United States' Pre- and Post-Certification Reservations), and 101 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to the Phase 1 Project Area. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person; provided, however that these covenants not to sue (and the reservations thereto) shall also apply to Settling Defendant's Related Parties.

b. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in Paragraph 101 (General Reservations of Rights), the State covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA and Wisconsin statutory or common law relating to the Phase 1 Project Area. These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not

extend to any other person; provided, however that these covenants not to sue (and the reservations thereto) shall also apply to Settling Defendant's Related Parties.

96. Covenants for Natural Resource Damages. In consideration of the actions that will be performed and the land transfers that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in Paragraphs 100 and 101, the United States, the State, and the Tribes covenant not to sue or to take administrative action against Settling Defendant for Natural Resource Damages relating to the Site pursuant to Section 107(f) of CERCLA and Section 311(f) of the Clean Water Act, Wisconsin statutory or common law, or Tribal law. These covenants not to sue shall take effect upon the receipt by the Trustees of the land to be transferred as required by Section XVIII (Natural Resource Restoration Projects). These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person; provided, however that these covenants not to sue (and the reservations thereto) shall also apply to Settling Defendant's Related Parties.

97. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Phase 1 Project Area and/or to pay the United States for additional costs of response if, (a) prior to Certification of Completion of the Phase 1 Remedial Action, (1) conditions at the Phase 1 Project Area, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Phase 1 Remedial Action is not protective of human health or the environment.

98. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel Settling Defendant to perform further response actions relating to the Phase 1 Project Area and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of Completion of the Phase 1 Remedial Action, (1) conditions at the Site, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Phase 1 Remedial Action is not protective of human health or the environment.

99. For purposes of Paragraph 97 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the ROD for the Site and the administrative record supporting the ROD. For purposes of Paragraph 98 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Phase 1 Remedial Action.

100. Trustees' Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the Trustees reserve the right to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, based on: (1) conditions with respect to the Site, unknown to the Trustees as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources ("Unknown NRD Conditions"), or (2) information received by the Trustees after the date of lodging of this Consent Decree which indicates that the releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type or future persistence that was unknown to the Trustees as of the date of lodging of this Consent Decree ("New NRD Information"). The following shall not be considered Unknown NRD Conditions or New NRD Information for the purpose of this Paragraph: (1) an increase solely in any Trustee's assessment of the magnitude of a known injury to, destruction of, or loss of Natural Resources at the Site; or (2) injury to, destruction of, or loss of Natural Resources at the Site arising from the re-exposure, resuspension, or migration of hazardous substances known to be present at the Site. For the purpose of this Paragraph, the information and conditions known to the Trustees shall include any information or conditions listed or identified in records relating to the Site that were in the possession or under the control of EPA, DOI, DOC, WDNR, or the Tribes as of the Date of Lodging of this Consent Decree.

101. General Reservations of Rights. The United States, the State, and the Tribes reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant and Settling Defendant's Related Parties with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and the Tribes reserve as to Natural Resource Damages, all rights against Settling Defendant with respect to:

a. liability for failure by Settling Defendant to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

c. liability based on the ownership or operation of the Site by Settling Defendant when such ownership or operation commences after signature of this Consent Decree by Settling Defendant;

d. liability based on the operation of the Site by Settling Defendant when such operation commences after signature of this Consent Decree by Settling Defendant and does not arise solely from Settling Defendant's performance of the Work;

e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by Settling Defendant;

f. criminal liability;

g. liability for violations of federal or state law that occur during or after implementation of the Work;

h. liability, prior to Certification of Completion of the Phase 1 Remedial Action, for additional response actions that EPA determines are necessary to achieve and maintain Phase 1 Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 14 (Modification of SOW or Related Work Plans);

i. liability for performance of response actions in areas of the Site other than the Phase 1 Project Area;

j. liability for costs that the United States will incur regarding the Site but that are not within the definition of Future Response Costs; and

k. liability for previously incurred costs of response.

102. Work Takeover.

a. In the event EPA, after consultation with WDNR, determines that Settling Defendant has (1) ceased implementation of any portion of the Work, or (2) is seriously or repeatedly deficient or late in its performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of 30 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 30-day notice period specified in Paragraph 102.a, Settling Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Settling Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 102.b. Funding of Work Takeover costs is addressed under Paragraph 48.

c. Settling Defendant may invoke the procedures set forth in Paragraph 80 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 102.b. However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 102.b until the earlier of (1) the date that Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 80 (Record Review) requiring EPA to terminate such Work Takeover.

103. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANTS BY SETTLING DEFENDANT

104. Covenants Not to Sue by Settling Defendant. Subject to the reservations in Paragraph 106, Settling Defendant and Settling Defendant's Related Parties covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Work, Future Response Costs, Natural Resource Damages, and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims against the United States, including any department, agency, or instrumentality of the United States, or the State, including any department or agency of the State, under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Consent Decree; or

c. any claims arising out of response actions at or in connection with the Phase 1 Project Area, including any claim under the United States Constitution, the Wisconsin Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law regarding the Work and this Consent Decree.

105. Except as provided Paragraph 114 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XXIII (Covenants by Plaintiffs and Tribes), other than in Paragraphs 101.a (claims for failure to meet a requirement of the Decree), 101.f (criminal liability), and 101.g (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States, the State, or the Tribes is seeking pursuant to the applicable reservation and only with respect to the entity bringing the action.

106. Settling Defendant and Settling Defendant's Related Parties expressly reserve all rights and remedies that relate to or arise from issues or matters beyond the scope of this Consent Decree, including, specifically, but not limited to, any claims regarding Chequamegon Bay, except those claims related to Natural Resource Damages in Chequamegon Bay. Except as specifically provided in this Consent Decree, nothing herein shall limit or otherwise alter or affect Settling Defendant's or Settling Defendant's Related Parties' rights, defenses, causes of action, claims or interests, or ability to assert same, whether arising under or pursuant to state, federal, or common law whatsoever, whether against Plaintiffs or others, and all such rights, defenses, claims, causes of action, or interests are hereby fully reserved. Settling Defendant and Settling Defendant's Related Parties reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the

foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans, reports, other deliverables, or activities.

107. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

108. Claims Against De Micromis Parties. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have for all matters relating to the Site against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

109. The waiver in Paragraph 108 (Claims Against De Micromis Parties) shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the criteria in Paragraph 108 if such person asserts a claim or cause of action relating to the Site against Settling Defendant. This waiver does not apply to any potential claim Settling Defendant may assert against the City of Ashland, Wisconsin, Soo Line Railroad, or Wisconsin Central Ltd. This waiver also shall not apply to any claim or cause of action against any person meeting the criteria in Paragraph 108 if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or Natural Resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or Natural Resource restoration at the Site.

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION

110. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to

pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

111. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Defendant and Settling Defendant's Related Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are the Work, Future Response Costs, and Natural Resource Damages.

112. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and the State in writing no later than 5 days after the initiation of such suit or claim.

113. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and the State within ten days after service of the complaint on such Settling Defendant. In addition, Settling Defendant shall notify the United States and the State within ten days after service or receipt of any Motion for Summary Judgment and within ten days after receipt of any order from a court setting a case for trial.

114. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIII (Covenants by Plaintiffs and Tribes).

XXVI. ACCESS TO INFORMATION

115. Settling Defendant shall provide to EPA and WDNR, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) created or generated pursuant to the requirements to perform the Work (hereinafter referred to as "Records") within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information created or generated pursuant to the requirements to perform the Work. Settling Defendant shall also make available to EPA and WDNR, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

116. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs under this Consent Decree to the extent

permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and WDNR, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing Records, it shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and the State in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that it claims to be privileged until the United States and the State have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

c. No Records created or generated pursuant to the requirements to perform the Work under this Consent Decree shall be withheld from the United States or the State on the grounds that they are privileged or confidential.

117. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVII. RETENTION OF RECORDS

118. Until ten years after Settling Defendant's receipt of EPA's notification pursuant to Paragraph 51.b (Completion of the Work), Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

119. At the conclusion of this record retention period, Settling Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such Records, and,

upon request, Settling Defendant shall deliver any such Records to EPA or WDNR. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide EPA and WDNR with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States and the State in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that it claims to be privileged until the United States and the State have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

120. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA and WDNR requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVIII. NOTICES AND SUBMISSIONS

121. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, WDNR, the Tribes, and Settling Defendant, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice, the U.S. Fish and Wildlife Service, or NOAA. Notices required to be sent to the United States shall be sent to EPA and the U.S. Department of Justice, but shall only be sent to the U.S. Fish and Wildlife Service and NOAA if they involve Natural Resource Damages. Notices required to be sent to Plaintiffs shall be sent to EPA, the U.S. Department of Justice, the State, and DNR, but shall only be sent to the U.S. Fish and Wildlife Service and NOAA if they involve Natural Resource Damages.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-08879/1

As to EPA:	Richard C. Karl Director, Superfund Division United States Environmental Protection Agency Region 5 77 W. Jackson Blvd. (SR-6J) Chicago, IL 60604-3590
and	Scott Hansen EPA Project Coordinator United States Environmental Protection Agency Region 5 77 W. Jackson Blvd. (SR-6J) Chicago, IL 60604-3590
to the Regional Financial Management Officer:	Richard Hackley United States Environmental Protection Agency Region 5 77 West Jackson Boulevard Mail Code: MF-10J Chicago, IL 60604-3507
As to DOI and the United States Fish and Wildlife Service:	Assistant Solicitor Branch of Environmental Restoration, Division of Parks and Wildlife 1849 C Street, NW, MS- 5311 Washington, DC 20240
and	Field Supervisor U.S. Fish & Wildlife Service 2661 Scott Tower Drive New Franken, WI 54229
As to NOAA	Laurie Lee Office of General Counsel 501 West Ocean Blvd., Suite 4470 Long Beach, CA 90802
and	Todd Goeks Physical Scientist, Region 5 National Oceanic and Atmospheric Administration 77 West Jackson Blvd. (SR-6J) Chicago, IL 60604

As to the State:	Attorney Kristin A. Hess Bureau of Legal Services Wisconsin DNR P.O. Box 7921 101 S. Webster Street Madison, WI 53707-7921
As to WDNR:	Jamie Dunn WDNR Project Manager 810 West Maple Street Spooner, WI 54801
As to the Bad River Tribe:	Mike Wiggins Jr. Tribal Chairman 72682 Maple Street/PO Box 39 Odanah, WI 54861
and	Natural Resources Director and Environmental Specialist 72682 Maple Street/PO Box 39 Odanah, WI 54861
As to the Red Cliff Tribe:	Tribal Chairperson Red Cliff Band of Lake Superior Chippewa Indians 88385 Pike Road Bayfield, Wisconsin 54814
and	Tribal Attorney Red Cliff Legal Department 88385 Pike Road Bayfield, Wisconsin 54814
As to Settling Defendant:	Jerry C. Winslow Xcel Energy Services, Inc., on behalf of NSPW 414 Nicollet Mall, MP7 Minneapolis, MN 55401
and	Kristen Shults Carney Assistant General Counsel Xcel Energy Services, Inc., on behalf of NSPW 1800 Larimer 11th Floor Denver, CO 80202

XXIX. RETENTION OF JURISDICTION

122. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXI (Dispute Resolution).

XXX. APPENDICES

123. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the 1998 Spill Response Agreement between Settling Defendant and DNR and is incorporated by reference only as to Activity No. a (related to lakefront warning signs) and Activity No. d (related to warning buoys in Chequamegon Bay), as required by Paragraph 26.f, and does not otherwise affect the provisions of this Consent Decree.

"Appendix E" is the form for the financial test demonstration described in Section XIII (Performance Guarantee).

"Appendix F" is the easement for the Bad River Falls Restoration Property.

XXXI. COMMUNITY INVOLVEMENT

124. If requested by EPA or WDNR, Settling Defendant shall participate in community activities pursuant to the Community Involvement Plan to be developed by EPA, after consultation with WDNR. EPA will determine the appropriate role for Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA and WDNR in providing information regarding the Work to the public. As requested by EPA or WDNR, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA or WDNR to explain activities at or relating to the Phase 1 Project Area. Costs incurred by the United States under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVII (Payments for Response Costs).

XXXII. MODIFICATION

125. Except as provided in Paragraph 14 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States, the State, and Settling Defendant, and shall be effective upon approval by the Court. Except as provided in Paragraph 14, non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States, the State, and Settling Defendant. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. In addition, modifications to Section XVIII (Natural Resource Restoration Projects) shall require signature from authorized representatives of the Tribes.

126. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

127. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

128. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

129. The undersigned representatives of Settling Defendant, Settling Defendant's Related Parties, the State, and the Tribes, as well as the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice each certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

130. Settling Defendant and Settling Defendant's Related Parties agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

131. Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any

applicable local rules of this Court, including, but not limited to, service of a summons. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXV. FINAL JUDGMENT

132. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

133. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 2012.

_____

United States District Judge

Signature Page for Consent Decree regarding the Ashland/Northern States Power Lakefront Site

FOR THE UNITED STATES OF AMERICA

7/20/12
Date

Ignacia S. Moreno
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

7/30/12
Date

Thomas A. Benson
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

John W. Vaudreuil
United States Attorney
Western District of Wisconsin

Leslie K. Herje
Assistant United States Attorney
Western District of Wisconsin
P.O. Box 1585
Madison, WI 53701-1585]

Signature Page for Consent Decree regarding the Ashland/Northern States Power Lakefront Site

7-11-12
Date

Richard C. Karl
Director Superfund Division, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Date

Craig Melodia
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Signature Page for Consent Decree regarding the Ashland/Northern States Power Lakefront Site

FOR THE STATE OF WISCONSIN

6/29/12
Date

Cathy Stepp
Secretary, Wisconsin Department of Natural Resources
101 S. Webster Street
Madison, WI 53707-7921

J.B. Van Hollen
Attorney General

7/10/2012
Date

Cynthia R. Hirsch
Assistant Attorney General
State Bar # 1012870
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857

Signature Page for Consent Decree regarding the Ashland/Northern States Power Lakefront Site

FOR NORTHERN STATES POWER COMPANY, A WISCONSIN CORPORATION

06/22/12
Date

Name (print): Mark E. Stoering
Title: President and Chief Executive Officer, Northern States Power Company, a Wisconsin Corporation
Address: 1414 West Hamilton Ave., PO Box 8, Eau Claire, WI 54702-0008

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): CSC Lawyers Incorporating Service Company
Title: Registered Agent
Address: 8040 Excelsior Drive, Suite 400
Phone: 608-824-7000
email:

Signature Page for Consent Decree regarding the Ashland/Northern States Power Lakefront Site

FOR SETTLING DEFENDANT'S RELATED PARTIES, SIGNING ONLY AS TO PARAGRAPHS 95, 96, 101, 104, 106, 111, 129, and 130

6/22/12
Date

Name (print): Scott Wilensky
Title: Senior Vice President and General Counsel, for Settling Defendant's Related Parties
Address: 414 Nicollet Mall, Minneapolis, MN 55401

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Corporation Service Company
Title: Registered Agent
Address: 380 Jackson Street, Suite 700, St. Paul MN 55101
Phone: 888 690-2882
email:

Signature Page for Consent Decree regarding the Ashland/Northern States Power Lakefront Site

FOR THE BAD RIVER TRIBE

8-1-12
Date

Michael S. Wiggins Jr.
Name (print): MICHAEL S. WIGGINS JR.
Title: TRIBAL CHAIRMAN / EXECUTIVE DIRECTOR
Address: P.O. Box 39
Odanah, WI. 54861

Signature Page for Consent Decree regarding the Ashland/Northern States Power Lakefront Site

FOR THE RED CLIFF TRIBE

Rose Soulier

Date

Rose Soulier
Tribal Chairperson
Red Cliff Bank of Lake Superior Chippewa Indians
88385 Pike Road
Bayfield, Wisconsin 54814